

D I A L O G U E

# COOPERATIVE FEDERALISM AND STATE APPROACHES TO ENVIRONMENT AND ENERGY

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## SUMMARY

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As state governments continue to increase their capacity for creating and enforcing environmental regulation, there has been growing discussion about the role of federalism in advancing environmental protection. Under the second Donald Trump Administration, the U.S. Environmental Protection Agency (EPA) expressed its renewed commitment to advancing cooperative federalism and its desire to partner with states; however, significant questions remain about how these two levels of government can align their priorities to both advance and streamline environmental protection. On October 7, 2025, ELI convened current and former state environmental officials for a discussion on cooperative federalism, how to ensure adequate funding in delegated and authorized primacy states, the importance of continuing to support focused and foundational scientific research, and the potential nexus between the reduction in EPA's workforce and loosened oversight. Below we present a transcript of the discussion, which has been edited for style, clarity, and space considerations.

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**Jordan Diamond** (moderator) is President of the Environmental Law Institute.

**Shawn LaTourette** was Commissioner of the New Jersey Department of Environmental Protection from 2021-26.

**Julie Moore** is Secretary of the Vermont Agency of Natural Resources.

**James Jennings** is Director of the Illinois Environmental Protection Agency.

**David Paylor** was Director of the Virginia Department of Environmental Quality from 2006-22.

**Edwin Kneedler** was a U.S. Deputy Solicitor General from 1993-2025.

**Jordan Diamond:** It is my joy and honor to welcome you all to the third annual Firestone Policy Forum, a policy dialogue hosted in honor of an iconic figure in environmental law, Judge Nancy Firestone of the U.S. Court of Federal Claims, who left us far too soon a few years ago. We are deeply honored that Nancy's family has given us the opportunity to honor her legacy in this way.

Judge Firestone is one of those rare individuals whose legacy spans a remarkable breadth. She had appointments across federal agencies, the U.S. Department of Justice (DOJ), law schools, the Environmental Appeals Board, federal courts, and more. She was a respected and lauded attorney. She was a teacher and mentor. She was a judge

and jurist. She worked on cleaning up waste on the ground and preventing pollution in the air.

She worked on the hyperlocal and at the highest level of international law and everything in between. She dug deeply in impartial and transparent adjudication processes and created and implemented them. She was not intimidated by people who disagreed, many of whom found themselves perplexed by how well they ended up agreeing with her. Judge Firestone was a woman who led with principle and humanity; who both trailblazed from the front and lifted up those falling behind; and who shaped more parts of environmental law, regulation, and adjudication than you would think one person could have done. We are honored to be able to host this annual policy forum to keep the conversation alive in the transparent, candid, and collaborative way for which she was known.

Our focus for today's forum is the wavering arc of cooperative federalism, which is always evolving but is undergoing particularly rapid shifts right now. We have four tremendous current and former state environmental leaders on this panel. Also joining us is Edwin Kneedler, former U.S. Deputy Solicitor General.<sup>1</sup>

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1. See *Law as Public Service*, 56 ELR 10102 (Mar/Apr 2026) for Mr. Kneedler's bio.

David Paylor was appointed director of the Virginia Department of Environmental Quality<sup>2</sup> (DEQ) in January of 2006 and he retired from the position in January 2022. He began his career in public service in June 1976, taking on many roles to protect Virginia's natural resources, first as a field biologist and then as an aquatic ecologist, a water resources manager, a petroleum programs director, and finally, director of operations with the DEQ. He previously served as president of the Environmental Research Institute of the States,<sup>3</sup> president of the Environmental Council of the States,<sup>4</sup> and as Gov. Mark Warner's Deputy Secretary of Natural Resources.

James Jennings was appointed director of the Illinois Environmental Protection Agency<sup>5</sup> in September 2024 after more than a decade of service within the agency. Prior to that, he worked for the Illinois Executive Inspector General and the Kentucky Department of Public Advocacy. Among many other service positions, James is chair of the Association of State and Territorial Solid Waste Management Officials' Materials Management Subcommittee,<sup>6</sup> and a member of the Great Lakes Commission,<sup>7</sup> Ohio River Valley Water Sanitation Commission,<sup>8</sup> and the Illinois Sustainable Technology Center Advisory Board.<sup>9</sup>

Julie Moore was appointed Secretary of the Vermont Agency of Natural Resources<sup>10</sup> (ANR) in January 2017. As Secretary Julie shapes Vermont's environmental agenda, focusing on water quality, the forest economy, and the importance of conservation. She currently serves on the boards of the Vermont Housing & Conservation Board,<sup>11</sup> Vermont Council on Rural Development,<sup>12</sup> as well as the ECHO Lake Aquarium and Science Center.<sup>13</sup> Before her appointment, Julie worked as the Water Resources group leader at Stone Environmental,<sup>14</sup> an environmental consulting firm, and spent seven years at ANR leading the state's efforts to reduce phosphorus pollution in Lake Champlain.

Shawn LaTourette was appointed commissioner of New Jersey's Department of Environmental Protection (DEP)<sup>15</sup> in January 2021, where he is responsible for formulating statewide environmental policy while directing programs that protect public health and ensure the quality of New Jersey's air, land, water, and natural and historic resources. Shawn first joined the Department as the chief legal and regulatory policy advisor to then-Commissioner Catherine McCabe in 2018. Shawn began his career defending victims of toxic exposure, including organizing and advocating for

the needs of vulnerable New Jersey communities whose drinking water was contaminated by petrochemicals.

Edwin Kneedler joined DOJ in 1975, and moved to the office of the Solicitor General just four years later. He became Deputy Solicitor General in 1993 and remained in that position until he retired in 2025. His career spanned 10 presidential administrations and three Chief Justices. As he presented his 160th and final argument before the U.S. Supreme Court last year, he received a standing ovation as he set a record for the most cases argued before the Court in modern times.<sup>16</sup>

We're going to start with opening comments from each of our state speakers. We will then move into a cafe-style conversation, where I will offer some questions for the group to respond. Then, we'll open it up to general Q&A.

## I. Current State of Cooperative Federalism

As we've said, cooperative federalism is a foundational ideal in a constantly changing dynamic. In 2025, we've witnessed more shifts than we've seen in quite a while. From funding to research, and from day-to-day dynamics to privacy, the federal-state relationship is a complex ecosystem. There are many different facets to this, all of which have profound implications for daily life as well as long-term progress on key issues. I would like to begin with each of you providing a few opening remarks about the current state and direction of cooperative federalism.

**Shawn LaTourette:** I remind myself, my legislature, folks in business and industry, and my staff that state governments are responsible for implementing more than 90% of environmental laws in this country. As a function of cooperative federalism, businesses that are seeking permits and novel industries looking to get off the ground must engage with state environmental regulators more than they do the federal government.

This approach to environmental governance grows out of an acknowledgement that through our environment each of us is interconnected, and so too are our levels of government, and we can only do the important work of improving and protecting our environment together. The responsibilities that our federal laws create are ultimately implemented alongside corresponding state laws. Across the United States, we often build upon federal environmental laws, supplementing them in our own little ways within our more local laboratories of democracy. The state and federal governments rely on one another through this rather integrated relationship. That relationship changes with administrations, and it changes too amidst the need to address new and emergent issues.

I think the state of cooperative federalism today is an open question; I do not think we have reached a settled point on what the state-federal relationship is in this first

2. See <https://www.deq.virginia.gov/>.

3. See <https://www.eristates.org/>.

4. See <https://www.ecos.org/>.

5. See <https://epa.illinois.gov/>.

6. See <https://astswmo.org/>.

7. See <https://www.glc.org/>.

8. See <https://www.orsanco.org/>.

9. See <https://www.istc.illinois.edu/>.

10. See <https://anr.vermont.gov/>.

11. See <https://vhcb.org/>.

12. See <https://www.vtrural.org/>.

13. See <https://www.echovermont.org/>.

14. See <https://www.stone-env.com/>.

15. See <https://dep.nj.gov/>.

16. Mr. Kneedler offered opening remarks to the Firestone Policy Forum, available in this issue at *Law as Public Service*, *supra* note 1.

year of the second Donald Trump Administration. Particularly, we have new priorities that are being identified by the new Administration—be that by the U.S. Environmental Protection Agency (EPA), or the U.S. Department of the Interior, or the U.S. Department of Commerce, each of which have some interplay with the New Jersey DEP. We are not on entirely solid footing vis-à-vis our federal counterparts. It is not static. Thus, I do not think we are at a point where we can say that cooperative federalism is reliable in one direction or the other because it has been consistently shifting in this first year of the new federal administration.

Thankfully, in our region—Region 2 in EPA parlance—we have begun building a strong relationship with our new regional administrator at the front office. Still, at the national level, certain regulatory regimes have not been entirely clear or in keeping with the state policies and laws that we have in New Jersey. In short, it is a complex and uncertain moment.

**Julie Moore:** I can offer a small state’s perspective about why cooperative federalism isn’t just a policy preference but actually is necessary to the environmental protection that we push forward as small states.

For context, Vermont has just about 650,000 residents. That’s the total population of our great little state. Therefore, it’s less than any of the 25 largest cities in the country. Yet my agency, the Vermont Agency of Natural Resources, is responsible for protecting air, water, and land under the same federal statutes as California, with 39 million residents, or Texas, with 31 million. This is only possible in part because of cooperative federalism, which includes not just federal funding but technical support.

For starters, it’s important to recognize the role federal funding plays in our budget and in state agency environmental budgets writ large. It provides the foundational capacity for the work that allows states to consistently implement federal statutes and programs. Without that federal investment, cooperative federalism would become an unfunded mandate, not a partnership. Small states, in particular, would struggle to meet those federal standards.

In Vermont, federal funding through EPA supports not only technical staff. It supports monitoring efforts and grant and loan programs at a scale we simply couldn’t afford on our own. Federal support actually goes beyond those elements. EPA, in my book, is a force multiplier.

When Vermont faces environmental challenges that go beyond our expertise or financial capability, EPA often brings specialized knowledge and resources that amplify our capacity. Things like evaluating the toxicology of contaminants such as polyfluoroalkyl substances (PFAS), or working with the team at ANR to address complex industrial legacy pollution issues through Superfund, or capitalizing our state revolving loan funds that are integral to the needed investments in drinking water and wastewater infrastructure.

But a strong federal partnership alone isn’t sufficient for state agencies to do our work well. We also need durable environmental policy. Successful environmental protection

requires taking a broad view and thinking for the long run. States can’t build and staff priority programs when federal policies swing dramatically every four years. Industries can’t make medium- and long-term investment decisions without regulatory certainty. Communities won’t plan critical infrastructure projects without knowing that funding is going to be there and available to support implementation once the design is complete.

Environmental policy needs to be predictable and based in science, evolving deliberately rather than politically so that environmental protection can be cost-effectively integrated into everyday work.

Cooperative federalism works when the federal-state partnership is stable and well-funded. While cooperative federalism is important to all states, I would argue it’s absolutely essential to small states like Vermont in meeting our environmental obligations, helping us provide regulatory certainty, and producing the environmental outcomes that benefit everyone we serve—from businesses and industries to municipalities to individual economies.

**James Jennings:** Illinois is not a small state. We are a little different from Vermont. In fact, four of our counties have more people than the entire state of Vermont.

But much like Vermont, cooperative federalism is integral to our ability to operate as a state. It covers our programmatic certainty via funding for programs that we have delegated to the federal government, and also the research with the federal government that we rely on for building our regulatory portfolio in a manner that is in addition to what EPA or the U.S. Department of Energy gives to the states.

The work that we do is innovative work. We are, at least within the state of Illinois, the only agency to function in a manner that touches each of the state’s 12.5 million residents daily. This is because everybody has to breathe, and everyone’s ideally drinking water. And because of the way that the state is set up, people all throughout the state are within five miles of a remediated site. So, the folks that we have on staff come to work every day, and do work in the background that impacts everybody they know and don’t know from the state.

In a lot of respects, environmental regulatory work is like the nervous system of society in that it is designed to function in the background in a manner that is minimally disturbing. But when there’s something that goes wrong, it is incredibly evident there’s a problem. The concern that we have in this state as to the way cooperative federalism may be evolving is how it is identifying some of those problems.

I have a 13-year-old and an 8-year-old. I spend a lot of time understanding that there were words that I thought I knew but apparently did not. We’ve had in recent months some elements of that with both words in the term “cooperative federalism.”

I’ll preface some of this. The staff at U.S. EPA Region 5 and U.S. EPA Region 5’s new leadership have been very good to work with. The career staff are the backbone of the work that the federal government does. We’ve been able to maintain a wonderful working relationship with those

folks. The new regional administrator has the same background, which really helped bond the relationship with the new regional leadership. The complication, though, is that there's not always the best information coming from D.C.

Take, for example, our budget. Categorical block funding is important for categorical grants. When the Office of Management and Budget proposed cutting categorical grants that support state implementation of federal environmental programs,<sup>17</sup> their justification was that EPA's categorical grants have become a push for states at the expense of taxpayers, many of whom received no benefit from these grants. That's incredibly difficult to understand. We're working *with* one another, and the core function of our agency and that of EPA are aligned—providing clean air and water to all Americans. So, reconciling this as “cooperative” has become increasingly difficult.

Then, for a state like Illinois, the federalist element has become equally complex. As a matter of state law, we have an environmental justice commission. As a matter of state law, we have additional, specific criteria for contractor procurement. Because our demographics are what they are, federal funds are often used to comply with these state requirements. If you have our federal partners come in and weigh in on state-specific issues that, in many instances, are entirely divorced from our federal activities, that's been difficult.

The work that we do is very valuable. The work that the federal government wants to partner with us on is equally valuable. But if I'm understanding what this relationship looks like going forward, it's an open question and debate.

**David Paylor:** Luckily, federalism is a concept that's always been very important to me. Back in the early 1990s, the Environmental Council of States (ECOS) was formed in large part because of the understanding that the states needed a stronger voice with EPA in terms of government programs.

The states didn't always agree on things other than the fact that states needed to have a larger role. I think states have grown up in the last 30 years, and in many cases, they do have a larger role. In 2006 or 2007, ECOS started using the phrase “co-regulators.” At that time, EPA said, “I don't know what you're talking about.” There was a lot of push-back on the regulatory side of things, unless it was to put together a pilot project or something like that.

Then in 2017, ECOS developed a paper for the incoming administration about the importance of cooperative federalism.<sup>18</sup> It might be the first time, at least since I joined ECOS, that we had 100% agreement on a paper. All the states said “we've got to have more and more cooperative federalism.”

So, as I said earlier, the states have grown up. They've gotten more sophisticated. And as Shawn said, the states do the majority of the regulatory work that is in federal

law. They now know how to do it much better than they knew how to do it in the early 1990s. So, I believe that we have made progress.

But I think the concept of a wavering path may be the right way to describe cooperative federalism because it varies by administration, both state and federal administration. And it varies by EPA regional office. So, while it is a growing thing that goes sort of up and down, I personally believe cooperative federalism has gotten a little bit stronger because of the states' maturation and knowing how to do it. I also think it's important, just from the standpoint of efficient use of our resources, to make sure that we get the important things done considering everything we have to do.

## II. Funding

**Jordan Diamond:** Thank you all for those opening comments and for setting us up quite strongly. Let's begin with a little bit of follow-up on the funding front. Could you all talk about how the funding changes we are seeing are affecting day-to-day operations, and how that requires some capacity-shifting?

**Julie Moore:** I think we're coming out of an era of unprecedented funding that's flowed into our agencies under the Bipartisan Infrastructure Law<sup>19</sup> and the American Rescue Plan Act.<sup>20</sup>

From that perspective, when I started in my role in 2017, AMR's budget was about \$125 million. Our current FY26 budget is \$332 million. Almost all of that \$200 million-plus increase is in pass-through grants and loans that we are able now to offer to communities, government organizations, and other partners for important environmental projects.

So, there's certainly a change in the wind under the current federal administration. It's a course that we're still sorting through. I think that the practical effects over the last 8 to 10 months have been less than some of the uncertainty that has been generated, and that's one of the more significant challenges we are continuing to manage.

We have a lot of very small partners that do really important work for us, such as monitoring by watershed groups, regional planning commissions, and the like. When they can't be certain that those dollars will be there at the far end of their project, they have a really hard time getting started.

For example, the Friends of the Winooski River—the major river that comes through downtown Montpelier—is doing a dam removal project this summer. The cost of that dam removal is about \$350,000. This is an important project. We believe it will help reduce some of the flooding that Vermont experienced over the last two summers once it's removed. They had \$30,000 in the bank. They came

17. See Letter From Office of Management and Budget to U.S. Senate Committee on Appropriations on Major Discretionary Funding Changes (May 2, 2025), encl. at 15, <https://www.whitehouse.gov/wp-content/uploads/2025/05/Fiscal-Year-2026-Discretionary-Budget-Request.pdf>.

18. ECOS, COOPERATIVE FEDERALISM 2.0: ACHIEVING AND MAINTAINING A CLEAN ENVIRONMENT AND PROTECTING HEALTH (2017), <https://www.ecos.org/wp-content/uploads/2017/06/ECOS-Cooperative-Federalism-2.0-June-17-FINAL.pdf>.

19. Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong (2021), <https://www.congress.gov/bill/117th-congress/house-bill/3684>.

20. American Rescue Plan Act of 2021, H.R. 1319, 117th Cong (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1319>.

to us and said, “what happens if we get started and the federal funding for this project is lost? How are we going to approach this, and is there some partnership or support the state can offer?”

Our coffers are suffering, too, and we certainly can’t backstop every federal funding program, but we’re trying to work through that with partners over this past construction season. I think that uncertainty is one of the most significant challenges we’ve seen in the early days of the new Administration.

**James Jennings:** For us, the primary area that we see a change is a need for extensive contingency planning. We’ve had three categories of federal funding, each making up about one-third of our overall budget. First are the pass-through grants that pay for engineers, attorneys, and other employees to do the work of our delegated programs.

Next, is our state revolving fund (SRF), which covers the near totality of the state’s water infrastructure. Similar to Vermont, anticipating future available state or federal money is one of the concerns of the emerging communities who have taken a very proactive series of steps to identify the entirety of their water needs and then apply for SRF funds in a strategic manner. These projects were designed to interweave over an entirely modernized water infrastructure within the next decade. Because there’s a relationship between those projects, many communities have come to us and asked whether they should even apply for SRF dollars in the next funding cycle because there won’t be follow-ups. There’s a set of expectations within the community that could be next. That’s a very real concern for Illinois EPA and for local governments that don’t have the financing to pick this work up on their own.

The third category of funding that we have is the Climate Pollution Reduction Grant.<sup>21</sup> That was entirely obligated and was paid in the state last year. Those are programs that we continue to operate because we already have the money in-house and it’s not subject to complete appropriation.

Similarly what we have seen, at least in our initial outreach sessions on this issue, is there is this specter of federal drawback that has had the effect of tearing back overall participation, out of fear that this money may not be available or that it’s a type of project that wouldn’t actually flow toward additional work.

While we can say with confidence that these are funds that we have available—they are in state coffers where we are able to proceed with the work—the messaging from the federal government has been so vocal in opposition of these types of programs that it makes it very hard for that work to continue.

**David Paylor:** In Virginia as well, 30% of our budget is from the federal government. But that 30% isn’t spread evenly across all programs. Federal cuts most heavily affect

water programs. Some of our other waste and air programs now get their funding in other ways that don’t rely on the federal government. So, water is where the hit is most largely factored and felt.

**Shawn LaTourette:** One thing that I would add to this conversation is the perspective coming from the private sector. I have worked at private law firms, was part of the defense bar, and have been part of communities like this one organized by ELI. I think one of the things I either misunderstood or did not completely grasp as a private practicing lawyer was the importance of that cooperative federal relationship, and how meaningful state primacy is, and how state primacy is funded (or not) by the federal government.

The long and short of it is that state governments take on the implementation of federal laws. EPA pays us to do that. Why? Because we are faster, we are closer to the issues, and environmental governance is cheaper when implemented at the state level as compared to implementation by the federal government. In New Jersey, I can hardly think of a single business that would go to EPA to get their permit for whatever regulated activity is at issue. Those businesses come to their state DEP.

In New Jersey, only 10% of the environmental protection budget comes from the federal government, but that 10% is significant. There are states throughout the country where the overwhelming majority of environmental agency budgets comes from the federal government. There are states for whom up to 80% of their environmental protection budget comes from the federal government.

What does that mean to the business and industry folks that have to do business with state environmental agencies? In the absence of federal funding—whether temporarily paused or entirely pulled back—there is a ripple effect throughout the business community and throughout the practice of environmental law. That can be incredibly disruptive.

We see a little bit of that now in New Jersey. With 9.5 million residents, our DEP has a combined operational and grant-making budget of roughly \$1.2 billion per year. Now, that is different from many states, and it gives us some flexibility. But to be clear, the state governments, like the other participants in this space, are always waiting on federal reimbursement. States are not getting money from the federal government to do the job of environmental protection. They are doing the job. They are doing the work. Whether that is an infrastructure project or the work of environmental engineering staff, the state agency is paying that money out and then seeking reimbursement from the federal government. Thus, there is a domino effect if funding is withdrawn, and I think that that is a really important point.

What we saw in the president’s proposed Federal Fiscal Year 2026 budget for EPA<sup>22</sup> was a specific statement

21. See Illinois Environmental Protection Agency, *Climate Pollution Reduction Grants*, <https://epa.illinois.gov/topics/climate/climate-pollution-reduction-grants.html>.

22. FY2026 EPA Budget in Brief, <https://www.epa.gov/system/files/documents/2025-05/fy-2026-epa-bib.pdf>; see, e.g., Andrea Shalal et al., *Trump*

on cooperative federalism that accompanied an unprecedented reduction in proposed funding to states via EPA. The statement gave me pause as a state official and it may similarly resonate with this audience. It read: “In FY 2026, the [EPA] will empower state and local governments to achieve environmental protection at a local level . . . The Budget recognizes that EPA has invested hundreds of billions of dollars over several decades building state and local capacity and many programs are mature or have accomplished their purpose.”

I am as sure as I am sitting here before you that the goals of fishable and swimmable waters in the majority of the regulated waters in the state of New Jersey are most certainly not yet meeting the criteria of the Clean Water Act. So, what “purpose” has been met? I do not have to answer that question.

### III. The Challenges of Uncertainty

**Jordan Diamond:** I’d love to switch now to the question of uncertainty and specifically how change actually happens. We’ve seen a lot of regulatory change since January 2025. But as we know, regulatory changes don’t happen instantaneously.

There is kind of an in-between period when something is considered, when it is finalized, and when it is actually implemented. Could you talk about how you handle that, how that affects your day-to-day operations, and how you manage those interim periods?

**James Jennings:** I think there are two components. One is for our actual operations and the underpinnings of our regulatory programs. The second is handling some of the external funding. So, there are all the questions we get from external parties wanting to know whether the state will backstop changes at the federal level or if there are proposed federal changes that will mean issuing permits in a different manner even if those permit applications are already in-house.

On the regulatory front, Illinois law is designed to be deliberate. So, even if the federal regulations ultimately passed through the state are adopted identically following their rulemaking within the state of Illinois, that enables us to identify state-specific items that may warrant either more robust or specific regulation. Then, we are charged with defending that before a third-party body that acts as a quasi-legislative/quasi-judicial entity and serving as a clearinghouse for regulations.

So, with the series of proposals that have been discussed at the federal level, realistically you’d be looking at 18 months to two years before some of those changes would make their way to our regulations—if they’d make their way at all. At the same time, we have the ability to adopt more stringent and more protective regulations. In

many instances, we are ahead of the federal government. For example, on issues like PFAS or on various toxicology rulemakings, we’ve already done the work that we wanted to do because of our specific state perspective. So, there wouldn’t be a need to shift course.

On the public-facing component, we have finite resources—both financial- and personnel-related. Every hour that one of our permit engineers has to spend on the phone with a major source about an application, asking whether we are going to immediately phase in something that’s in a press release, that’s an hour spent away from reviewing a permit application.

Likewise, every hour one of our community relations employees is on the phone with a concerned community member because EPA has announced that they are pulling the public advocate that’s been doing the work in that community, is an hour that they aren’t able to spend doing the work for the benefit of those individuals.

Some of these changes, absent additional feedback from the states and in real-time, would probably mean a resource drain on us, which underpins our ability to do the work that’s actually delegated to us. It makes it harder for us to meet some of these federal deadlines because of the actions that are being taken.

**David Paylor:** I would just say, if it’s a federal rollback, that rollback doesn’t necessarily apply to the state of Virginia because we have state laws that at least cause things to change more smoothly. As an example, “waters of the United States” (WOTUS) had a significant rollback in protection of wetlands. What was the impact in Virginia? Nothing, because we had very strong wetland rules that we would continue to apply.

Now, if there’s a ratchet-up within environmental regulations, then obviously, we’ve got to go through a rule-making process for that. But because of state law, it sort of smooths the waters a little bit in terms of how fast the change is coming.

**Shawn LaTourette:** I think the uncertainty is greater for the marketplace than it is for the welfare of the agency at the state level. I think the uncertainty that gets created and then ripples through the environmental services sector, business and industry, and through those required legal services as well, is more of a difficult point. It is hard to plan investments. It is hard to have a sense of consistency, reliability, and predictability.

With respect to our day-to-day operations at New Jersey DEP, what concerns me more is how what is happening at the federal level breeds uncertainty in state government and adversely affects the morale of our practitioners—the experts who run the agency. There is a definite impact there.

From a regulatory perspective, uncertainty sown at the federal level takes time to reach into our regulations and their implementation, if they are affected at all. At least in New Jersey, we have a long, strong, and bipartisan history of going above and beyond where the federal regulatory floor is set. The federal floor is just not good enough for

*Proposes \$163 Billion Cut to US Budget That Slashes Domestic Spending*, REUTERS (May 2, 2025), at <https://www.reuters.com/world/us/trump-unveils-federal-budget-blueprint-2025-05-02/>.

the people of New Jersey who consistently demand greater environmental improvements and protections, in no small part due to our state's industrial legacy.

For New Jersey, I think the greatest impacts and lack of federal certainty will be those that affect the Superfund program. New Jersey has the greatest number of Superfund sites in the nation. The pace of investigation and remediation at recently added National Priorities List sites is a point of uncertainty for us. Practically speaking, the rolling back of climate regulation at the federal level is less a point of uncertainty in New Jersey because we have our own state authorities and regulations. Same thing with water quality. We have our own drinking water protection. So, the uncertainty lies at those points where there is not an exact federal corollary in our state law.

**Julie Moore:** I'll quickly note three areas where we've seen challenges over the last 10 months or so. First, is PFAS and the lack of clarity around where EPA is headed with their drinking water standards. We are at a moment where we have these unprecedented federal resources that can be used to help communities, but we don't have that certainty around who we should be prioritizing for that work.

Advanced clean cars and advanced clean trucks is another area of great uncertainty. Like New Jersey, we also have a state-level climate action plan. But it relies heavily on the implementation of California's clean cars and clean trucks rules, which were rescinded by the current Congress and Administration,<sup>23</sup> and so we can't rely on that. What are we to do?

Third, there's the changing definition of WOTUS. Similar to Virginia, the changing definition had little practical effect in Vermont. But it brought forward a whole host of questions from folks who wanted to know what it means to them and their properties on the ground, and who were surprised to learn it meant almost nothing.

So, it is this kind of turbulence, as well as what we can count on the federal government providing, that determines our actions in some of these disparate areas. From the air and climate to water quality, the uncertainty really creates an extra set of challenges at this moment.

#### IV. State Primacy and Preemption

**Jordan Diamond:** Thank you for providing a lot of specific examples that I think are very illuminating. If only we had someone on the panel who has had 46 years in the federal perspective! And so, Ed—James spoke about the maturation of state programs over the past 30 years. It would be really wonderful if you could comment on the

development of state primacy and preemption during your tenure at the Department of Justice.

**Edwin Kneedler:** On preemption, generally, the Court has moved back and forth. I remember, in the 1980s, there was a strong perspective within DOJ that federal statutes should not be interpreted to preempt state law. Then, that swung back, I think, because of the business interests whom it benefited. The preemption of disparate state laws and having that replaced by a uniform federal standard is really helpful to them, and helpful for state administration. So, in my experience, we argued both ways, not surprisingly, on preemption questions. They're often very difficult, and actually, one of the most fascinating to deal with.

And often, there's more room for state involvement than what there seems at the outset. My sense is that there's still a pretty strong pro-preemption sentiment in the government and the courts. I've been privy to what's been going on in the Administration on that front.

I worked on the *American Electric Power Co. v. Connecticut* case in 2011.<sup>24</sup> In that case, I thought the argument for preemption, both statutory and constitutional, was very strong. I think that remains strong today with respect to the second wave of state environmental regulation.

I think it's very unlikely that states are going to commit to regulate out-of-state actions. It also depends on how specialized or unique or exclusive the federal interest is. And if we're talking about foreign relations and the like, the state action will be more suspicious. A lot of times, a state's perspective seems to be aimed directly at the federal interest.

While this is not federal statutory preemption, we had a Supreme Court case two or three years ago under the Commerce Clause, in which a state had regulations on the sale of products.<sup>25</sup> The state recalled the products because production of them did not satisfy that state's standards. The question then was, does the regulating state effectively bar the entry of products from out-of-state if they did not comply with the state standards? The Court there based its holding on constitutional grounds, but with an eye toward the role of states in those questions asked. It's probably close to a real affirmation to state sovereignty.

**Jordan Diamond:** Thank you for that insight. And may I say that that was one of the most succinct and clear descriptions of the *National Pork Producers* case that I've heard. So, an additional thank you specifically for that.

#### V. Government Research

**Jordan Diamond:** We have room for one more question that I'll throw out. I'd like to focus it on research. Envi-

23. In April and May of 2025, the U.S. Congress passed three U.S. House of Representatives Resolutions (H.J. Res. 87, 88, and 89) under the Congressional Review Act that would nullify a set of Clean Air Act (CAA) preemption waivers EPA granted to California. The resolutions were signed into law on June 12, 2025 (Pub. L. No. 119-15), effectively overturning California's Advanced Clean Cars II, Advanced Clean Trucks, and Heavy-Duty Omnibus Low NO<sub>x</sub> regulations.

24. 564 U.S. 410 (2011). In this case, the Court held that the CAA displaces any federal common-law cause of action to seek abatement of carbon dioxide emissions from fossil fuel-fired power plants.

25. *National Pork Producers v. Ross*, No. 21-468 (May 11, 2023) (the Court, in a splintered 5-4 decision, affirmed dismissal of a constitutional challenge to a California law that forbids in-state sale of pork meat from breeding pigs that are "confined in a cruel manner").

ronmental issues require a lot of data—a lot of information built on a lot of scientific research and more. Could you comment on the current research dynamic and what research partnerships are like at this moment?

**Julie Moore:** I'd be happy to start. Dave and I both serve on the board of the Environmental Research Institute in the States (ERIS), a subsidiary of ECOS, which is focused on coordinating state research priorities with what has been detailed now in EPA's Office of Research and Development (ORD). I think there's a lot of concern in that space. Obviously, the EPA Administrator has announced his intention to push many of those research staff back into program offices, but it's not entirely clear what they will be doing in those program offices—whether it's filling vacancies that have been created through some of the early retirement incentives, or whether we'll be continuing that research work.

I think there is a strong sentiment across many ECOS members that having the states individually do that same kind of research is unaffordable and untenable. We don't know what the future looks like, but I think there is a shared concern among almost all members of ECOS about what it would mean if EPA is no longer doing some of that foundational scientific research that underpins air quality standards, water quality standards, drinking water maximum contaminant levels (MCLs), and so on to ensure that we're all working from that same base of information.

**David Paylor:** I would say that, out of all the things that EPA does to help support the states, research is the most important thing because we don't have the resources to do everything, and because we need to have a relatively level playing field across the country.

At ERIS, we have continued communication with folks who are in research and we're trying to learn a little bit more about that. But the main thing we try to communicate to them is that the research they do, especially some specific research they do like air quality standards, water quality standards, MCLs, and those kinds of things, we can't do that. We need help from the states. So, we're trying to make that communication to EPA and they are heretofore letting us make it.

**Shawn LaTourette:** One thing that I would add about the research relationship between the states and the federal government, particularly EPA's ORD, is that the reorganization of EPA is going to be what it is. I have reorganized my agency in multiple different ways and multiple different times. So, I do not begrudge EPA trying to reorganize to make things more efficient. That is the province of the executive.

But, to reorganize a function that is critical to the health and well-being of people across this country out of existence would be a source of great concern. We are not sure whether that is, in fact, happening or not. There is talk around moving ORD scientists to an office of applied research. I am not entirely sure what is meant by that at this moment.

But to put in context what is so critical about the scientific apparatus of EPA in the context of the state-federal relationship, let's look at a quick example. We had in the state of New Jersey a water system that had a serious Legionella outbreak. Sadly, people lost their lives. Legionella does not typically occur in water distribution systems themselves. Rather, it occurs in buildings via heating and cooling systems, water towers, things of that nature.

Without the support of ORD, which came to New Jersey to help root out this Legionella problem, our state capital city would have struggled. It would have not been impossible to address, we would have found a way, but this is the critical linkage that protects the health of real people in the real world. Similar things have happened in states across the country with respect to lead and corrosion control. EPA science impacts many people in the real world for the better.

**David Paylor:** What we've heard from EPA so far is that many or most of the research labs are not shutting down. So, they're not talking about not doing research. Sometimes, you might infer that based on what you read in the press about how the Department is going to be organized.

**James Jennings:** If we go back to Julie's point about the consistency among the ECOS members and their worries of what banning ORD would look like, for us, it comes down to access and the opportunity cost. We worked with the University of Illinois system on research that went above and beyond what ORD needed for things that were state-specific. But even in doing that, there were numerous instances when they knew about it and said, "well, we don't have a person who knows this stuff and so we need to outsource, or we need to hire somebody, or we need to go through another state university to be able to bring them in the fold."

One of the beauties of ORD is that it is so broad that you have the ability to cover all those subject matters. It's something that cannot be replicated easily at the state level. But that also goes to the loss of what other research is being done. So, if ORD were to not cover some of these topics and the states in turn had to pick them up, work that otherwise would have been completed by state agencies like ours or our state university system is being lost, and we won't know what the impact of that is until much later down the road.

I think that is very concerning because we have been able to head off some very significant potential environmental issues by virtue of this arrangement. We don't really know what rolling away from it looks like. What we do know is that there is a risk and that risk could be really profound, particularly in communities that don't have the ability to pay for work themselves.

**Jordan Diamond:** Thank you all. I really, really appreciate those comments. At this point, we have a few minutes to take questions from the audience.

## VI. Audience Q&A

**Audience Question #1:** The federal-state relationship is defined in four of the EPA statutes.<sup>26</sup> My question to each of the panelists is that, if and only if you think the statutory framework is outdated, what is the one major change you would make to those statutes to improve state-federal cooperation?

**Shawn LaTourette:** I am struggling with your question because I do not experience the difficulty of the state-federal relationship as a function of a statutory environment. I experience it as an outgrowth of how a statutory function is performed. So, I don't have an instant answer about what I might change.

I mean, there are a lot of things about statutes that I would change, but not about the state-federal relationship in particular. There is no statute that strikes me as "that's what needs to change." Rather, it is the nature of the relationship and how it is performed by those who are responsible for executing the plan.

**David Paylor:** I'm not sure whether it would be a statutory change, but a change that clarifies that regulatory decisions for regulations that were consistent with the federal law are delegated to the states. At most, EPA would have a review of some of them but would take away the ability to oversee and rewrite them. So, we have to clarify that role among the states that regulation was in fact only delegated to the states.

**James Jennings:** In Illinois, we have a prohibition on backsliding that covers the totality of our state environmental law. So, I wouldn't look at it as necessarily, just vote for these federal authorities and something that's being potentially borrowed from what we see in the state. But it certainly comes from the expectation such that it's recognizing that the U.S. Congress would never mandate that any federal agency give  $x$  amount of money or  $x$  percentage of money to the states.

**Audience Question #2:** There are so many differences between Trump 1.0 and 2.0, but I feel like we were used to the federal rollbacks in Trump 1.0. But now, it is really very different because it feels like they're challenging federalism really intentionally, with affirmative attacks on the states.

I'm trying to find any examples that you might have about what might be the most viable to sustain based on solid state and local authority—whether it be through land use or through different messaging, or the state's authority over electricity, for example—so that we can find ways to maintain momentum. Maybe not always through a climate lens, but on resilience, on energy efficiency, on renewables and heat pumps, and zoning changes, and all those things.

If you have any examples of that, especially if there's any examples of where there's actually funded support coming out of Washington, D.C., it would be great to know.

**Julie Moore:** Thank you for that very easy question [laughter from audience]. So, well, Vermont is the state being sued for its climate Superfund law policy by DOJ, the U.S. Chamber of Commerce, as well as 24 Republican state attorneys general.<sup>27</sup> So, we really have our hands full at the moment with that litigation.

That said, I don't think it changes a lot of the work that's being state-led and done on the ground, particularly in the resilience and adaptation space. Vermont had very devastating and widespread flooding in both 2023 and 2024 that caused hundreds of millions of dollars' worth of damage in our relatively small state. So, we spent a lot of time through state policy trying to make sure we don't just build back but build back better. I think that's an area of incredible success that Vermonters enjoy.

Following Tropical Storm Irene, which pounded the state in 2011, we worked very hard with FEMA to put in place a set of obligations where, if we hold ourselves to more climate-informed codes and standards for how we design our roads and bridges, FEMA agreed that they will pay for those upfits when something is damaged in a federally declared disaster, as opposed to replacing it in kind. To my knowledge, we are the only state in the country that has that kind of relationship with FEMA.

I'm a civil engineer by training as opposed to a lawyer, but I will tell you bridges and culverts have a 50-year lifespan. So, this is a 50-year proposition. We're 15 years into it at this point. But those last two summers showed us that, where we are using better design standards that reflect current precipitation patterns, we can build infrastructure that is up to the challenge.

So, I think over time we are becoming more resilient. I don't know if the current FEMA would negotiate that sort of agreement with a state, but I can't overstate how important that has been to our efforts to gain resilience and adapt.

**Shawn LaTourette:** I think that there is a lot of movement that can be made on both climate mitigation and climate adaptation at the state level.

Climate policy may be slower at the state level—though, it's hard to be much slower than we are at this particular moment nationally—but climate action can be more durable and more consistent when performed by subnational actors. Bundling that together with whatever may happen with federal action in the United States moving forward is important, but we have got to move the topic in every single one of these states, in my opinion.

**James Jennings:** I would agree with that. So, the state of Illinois has a constitutional requirement that specifically entitles every resident of the state to a healthy

26. Specifically, these are the CAA, the Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide, and Rodenticide Act.

27. Climate Superfund Act, Act 47 of 2025 (10 V.S.A. Chapter 24A).

environment.<sup>28</sup> We interpret that to mean that it includes more than just addressing the impacts of climate change.

You all watch the news, so you know Illinois is not among the federal government's preferred states. So, for this work, we did not see the federal government as a partner. That's just the reality. States can still do a lot of work using their own authority, and we have a constitutional obligation to do so if we're willing to do it. The outcome of last year's election does not change what our broader direction is, let alone employ the state neighbors to do so.

**Audience Question #3:** I'm wondering if any of you could speak to the interstate issues—water quality from the Mississippi River to the Chesapeake Bay, or the air quality problems across the states—and how you think you can work with the federal government and your fellow states on those issues.

**James Jennings:** This is a real-time, evolving issue as there's some potential litigation. I'll leave it at that. It's an evolving issue and one that is complicated by some of the approaches taken.

**Julie Moore:** Lake Champlain is obviously shared by Vermont, New York, and the provinces of Quebec, which introduces a whole other level of complexity. And that coordination has been built over a period of time. While there is an important role for federal partners to play in those conversations, to my mind they're well enough established at this point that they can and will continue in the absence of federal leadership. I haven't seen any diminishment of our partnership with New York and Quebec around Lake Champlain and anticipate there's probably similar stories to be told around other shared waterways.

**Audience Question #4:** I was hoping the panel could comment on the state-federal relationship in the area of natural resources and public lands. Does the term cooperative federalism resonate for you in those areas?

**Ed Kneedler:** In my practice over the years, it has not been so much an issue of cooperative federalism. But certainly, at the administrative level, we have a lot of situations where the federal government's view of, for example, takings, is very close to the view that the states have. So, when we have litigation we're often on the same side. It's just like criminal law, where the application of the Bill of Rights is going to affect federal and state people generally.

In terms of litigation, DOJ is mostly reactive because the government's been sued or is defending policies that occurred elsewhere. Sometimes, when cooperative federalism sits with the federal government and not the states, we may have differences of views on the authorities. Take, for example, the question of states' standing in court, where

the states' claim of injury is simply increased costs incurred by the state under state law.

Those sorts of arguments for standing don't work because the U.S. Constitution establishes that the national government and a state government are independent sovereigns. They have their own sovereign authority in how a state chooses to respond in its own regulatory programs. A response to what the federal government does is up to the states. That's with respect to their sovereignty, not a denigration of one. So, that's one pretty important area where the government has taken that position in a number of cases in the past.

**Shawn LaTourette:** In New Jersey, my agency (DEP) is the public lands manager, the steward of fish, wildlife—all the interior functions—and is also the natural resource trustee. We have always had a pretty aligned relationship with our natural resource management agency counterparts. It is not the same sort of relationship as when we were talking earlier about cooperative federalism vis-à-vis EPA. We have not seen the same uncertain shift in the natural resource management relationship.

With respect to natural resource assessment and restoration, the federal government has always been too slow for New Jersey's taste, so either we tend to go alone or faster from a natural resource damage perspective. But I think the jury's out in what we see in the events there.

**Audience Question #5:** We've been talking about the states' relationship with the executive branch of the federal government. I'd love to hear your comments about the states' relationship with the judicial branch of the federal government. Since I graduated from law school in the 1980s, takings has evolved tremendously. I'm curious to know how, from a state perspective, you all see that as limiting your ability to accomplish your objectives. I mean is it just a little speed bump that you have to work around, a major obstacle, or something in between?

**James Jennings:** It's something in between. So, how we are specifically looking to change that, the federal law, and how to change it through the Supreme Court, is not impossible. We just have to find the appropriate avenue for accomplishing our objectives.

The most recent instance that we encountered this was a case last term, in which the Supreme Court effectively altered how we had been issuing discharge permits on a National Pollutant Discharge Elimination System program. In his opinion, Justice Samuel Alito noted that EPA could just write the more-specific permits.<sup>29</sup> We don't often get that type of specific direction on how to comply with Supreme Court precedent, but the main point we took was if we're not able to utilize the tools that have been historically available to us, but we can be more specific and have the expected outcome, we're going to do that because ulti-

28. ILL. CONST. ART. XI, SECTION 2.

29. *San Francisco v. U.S. Environmental Protection Agency*, No. 23-753 (Mar. 4, 2025).

mately our objective is to issue the most legally protected permits possible.

So, it's a speed bump. I'm an impatient person and so it's frustrating for me to know that the Supreme Court has taken steps that ultimately will make our permitting program slower. But given our state constitutional obligations, that's just the outcome. It's incumbent upon us to just debate what that reality looks like for our permitting community.

### **VIII. Concluding Thoughts**

**Jordan Diamond:** Thank you all. Any final thoughts or themes you'd like to point out before we close?

**James Jennings:** We need to keep pursuing cooperative federalism, but the reality is the states are your leaders. So, it's incredibly important to recognize that reality.

**Julie Moore:** I would like to reiterate the importance of our federal partners as force multipliers. States are really in the lead, but there comes a moment in almost any media program where we are just way in over our head. And absent having that ability to "phone a friend" and then receive support in our moments of greatest need, I think there's a real risk that lies ahead in addressing some of our most significant environmental concerns.

**Shawn LaTourette:** This work is not political. Often, it is inappropriately politicized, make no mistake about that. Call it out when you see it.

**David Paylor:** Well, let me say I've learned a lot here. I've been very impressed with the knowledge and commitment of the people in the state governments. I commend all of you. One theme that seemed to come through consistently is money: funding is really necessary, be it at the EPA level or the grant money that support funds at the state level. That's what supports us and our work.