

Securing environmental justice for all: Joe Biden's agenda to ensure everyone lives in safe and healthy communities

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Abstract: *Assicurare la giustizia ambientale per tutti: l'agenda di Joe Biden per garantire che ciascuno viva in comunità sicure e salubri* – In line with the first two years, also in his last two years of Presidency Joe Biden has chosen to conduct a policy aimed at addressing environmental injustices and inequalities, taking actions that guarantee an improvement in the quality of life of people and allow the most marginalized communities to have their voice heard.

Keywords: Environment; Justice; Equality; Disadvantaged communities; Whole-of-government approach

1. Introduction

There are two key aspects that should be highlighted as an introduction to Biden's environmental policy: the continuity with the objectives that the Biden administration set from the outset, and at the same time, a forward-looking approach marked by the constant fear of what might happen if Trump were to win the next election. Consequently, environmental choices have been driven by the urgent need to mitigate the potential impacts of a Trump presidency. Choices must be made now and not left to the uncertainty of the future. In practice for weeks, the Biden administration has rushed through environmental regulations to avoid a congressional veto if Republicans take the Senate and the White House in November.

The Biden administration has accelerated the implementation of significant environmental regulations, including a historic ban on asbestos and strict limits on toxic chemicals in tap water. These regulations aim to cut climate-altering emissions and enhance public health safety. The administration has prioritized enforcing these rules quickly to protect them from potential reversal by future governments. The strategy includes implementing technologies such as carbon capture and mandates that could redefine industry standards, ensuring a reduction in environmental pollutants and a move towards a more sustainable and healthier environment.

In short, faced with the imminent threat of Trump re-taking power, Biden has felt compelled to act swiftly. The administration's decisions have been motivated by a desire to pre-empt potential policy reversals and secure

a lasting environmental legacy. The clock is ticking, and Biden must act now.

2. Biden's environmental new rules and the end of the Chevron deference

The race to implement all the regulations needed to 'safeguard' the environment before President Biden leaves office should not overshadow the fact that threats can also emerge from the judiciary.

Indeed, even if the Democrats had won a second term with Kamala Harris and Congress had remained in their hands, their rules would have been still at risk of being invalidated by a judiciary exhibiting growing skepticism towards federal agencies.

Already in *West Virginia v. EPA*¹ of June 2022, the Supreme Court of the United States held that the Environmental Protection Agency (EPA) did not have the power to issue the Clean Power Plan and, in particular, to impose an energy transition from coal to renewable sources on existing power plant.

And now the recent U.S. Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo*² of August 6, 2024 dealt a severe blow to the ability of federal agencies to do their jobs by ending the 40-year-old precedent doctrine of the "Chevron deference" which evolved from the landmark ruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*³ This last established that if the statutory language is ambiguous—that is, if it has two or more reasonable interpretations—the reviewing court must defer to the agency's choice in how to carry out the law. The idea behind such deference is that expert agencies, accountable to an elected president, are better suited than federal judges to make the policy choices that Congress left open.

Instead of deferring to the specialized knowledge of agencies in interpreting ambiguous legal provisions, federal judges are now empowered to determine the meaning of the law. As a consequence, judges, unaccountable to the electorate, will be able to assume a policymaking role.⁴

¹ US Supreme Court, *West Virginia v. Environmental Protection Agency*, 597 US 697 (2022). To study more, see D.D. Doniger, *West Virginia v. EPA* One Year On, in *Yale J. Regul.*, June 29, 2023.

G. Vivoli, *Gli effetti della sentenza West Virginia v. Epa sul futuro dell'administrative state statunitense*, in *federalismi.it*, October 18, 2023.

² US Supreme Court, *Loper Bright Enterprises v. Raimondo*, 603 U.S. (2024), 144 S. Ct. 2244. For a detailed analysis, see C. J. Walker, *What Loper Bright Enterprises v. Raimondo Means for the Future of Chevron Deference*, in *Yale J. Regul.*, online, June 28, 2024; G. Romeo, *Statutory stare decisis e tenuta del precedente wrongly decided: una lettura di Loper Bright Enterprises v. Raimondo*, in *DPCE online*, 3, 2024, 2131-2143.

³ US Supreme Court, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). See, C. R. Sustain, *Chevron without Chevron* in *Supreme Court Rev.* 59 (2018) according to whom *Chevron* can claim the title of the most important case in all of administrative law.

⁴ For a critical analysis of the *Loper Bright Enterprises v. Raimondo* decision, see B. E. Hill, *Chevron's Demise and Environmental Justice*, in 54 *Env't L. Rep.* 10933 (2024) who highlights the importance of the Justice Kagan's dissent opinion according to which: «For 40 years, Chevron . . . has served as a cornerstone of administrative law, allocating

We know that the *Chevron* deference empowered agencies, such as the EPA, to adopt more expansive constructions of their statutory mandates. Since *Chevron* decision, the traditional understanding of a statute as possessing a single, authoritative meaning has been supplanted by a more flexible and indeterminate approach. The flexibility afforded by the *Chevron* doctrine enabled the EPA to be far more ambitious in its policy decisions without unnecessary Congressional intervention. In 2015, President Obama announced the Clear Power Plan, an executive action that used the *Chevron* doctrine to extend the Environmental Agency's authority to regulate greenhouse gas emissions in the power sector. The EPA projected the Clean Power Plan would reduce the electricity sector's carbon pollution by 32% by 2030 and save the country \$20 billion in climate-related costs.

So, if the so-called “*Chevron* deference”, a legal doctrine that has empowered agencies like the EPA for decades, has been instrumental in enabling environmental regulations, overturning *Chevron* would have far-reaching consequences, potentially dismantling crucial environmental protections. Three key regulations that could be jeopardized include:

1) The oil and gas plant methane rule: this regulation limits methane emissions from oil and gas operations, a potent greenhouse gas contributing to climate change.

2) Vehicle emissions standards: these standards set limits on vehicle emissions, improving air quality and public health.

3) Fossil fuel power plant emissions standards: these regulations limit harmful emissions from power plants, reducing air pollution and mitigating climate change.

The erosion of *Chevron* deference has far-reaching implications for environmental protection and climate change mitigation in the United States. By curtailing judicial deference to agency interpretations of ambiguous statutes, the Supreme Court's recent decision in *Loper Bright Enterprises v. EPA* has significantly weakened the regulatory authority of federal agencies like the EPA.

Without *Chevron* deference, courts are more likely to scrutinize agency actions, potentially leading to a surge in lawsuits challenging environmental regulations. This increased legal uncertainty creates a risk-averse environment for agencies, prompting them to adopt a more cautious

responsibility for statutory construction between courts and agencies. . . . That rule has formed the backdrop against which Congress, courts, and agencies-as well as regulated parties and the public-all have operated for decades. It has been applied in thousands of judicial decisions. It has become part of the warp and woof of modern government, supporting regulatory efforts of all kinds-to name a few, keeping air and water clean, food and drugs safe, and financial markets honest»; G. F. Ferrari, *Loper Bright: cronaca di una morte annunciata?* in *DPCE Online*, 3, 2024, 2115-2130. See also, C. R. Sustain, *The Consequences of Loper Bright* in 24-29 *Harv. Public Law Working Paper* (2024), Available at <https://ssrn.com/abstract=4881501>, who observes that the *Loper Bright* decision, which overturned the previous *Chevron* ruling, could shift authority from agencies to courts, significantly increasing the likelihood that courts will overturn agencies' legal interpretations. The Author questions whether this will actually happen and notes that under *Chevron*, courts did not, in fact, give agencies carte blanche; on the contrary, they often invalidated agencies' legal interpretations. By how much will the annulment rate increase? According to the Author, it is too early to say.

approach to rulemaking. As a result, agencies may hesitate to implement timely and effective measures to address pressing environmental issues, such as climate change and pollution.

In short, the Environmental Protection Agency is best suited to decide how to protect the environment. Overturning *Chevron* does an immense disservice not just to the EPA, but to the climate change too. The potential consequences of this shift are dire. Weakened environmental regulations could lead to increased pollution, degradation of ecosystems, and harm to public health. Furthermore, the ability of the United States to meet its climate change commitments and contribute to global efforts to reduce greenhouse gas emissions could be compromised.

The implications extend beyond domestic concerns. The United States has historically played a leading role in international environmental governance. A weakened regulatory framework could undermine the country's credibility and influence on the global stage, hindering international cooperation on climate change and other environmental issues.

In conclusion, the erosion of *Chevron* deference poses a significant threat to environmental protection and climate action in the United States. It is imperative that policymakers and the public closely monitor the impact of this decision and advocate for measures to strengthen environmental regulations and ensure the effective implementation of climate change policies.

3. Building a just and healthy environment for all

In the sign of continuing with the past, also these two last years Biden administration has focused its attention⁵ on three problems that threaten the lands, waters, and wildlife:

1) The disappearance of nature: the degradation of natural habitats and the loss of biodiversity are undermining the resilience of ecosystems and their ability to provide essential services. Urgent action is needed to mitigate this crisis and safeguard the planet's future.

2) Climate change: it is accelerating the nature crisis. Warming oceans, ocean acidification, and deoxygenation are harming marine life. On land, climate change is driving more frequent and intense wildfires, droughts, and floods, disrupting ecosystems and forcing species to adapt or perish. The nature crisis is exacerbated by climate change, which is rapidly altering ecosystems on land and water

3) Inequitable access to the outdoors: the legacy of systemic discrimination and segregation continues to shape the unequal distribution of environmental benefits and burdens. Communities of non-white and low-income neighbourhoods are disproportionately exposed to environmental hazards, such as air and water pollution, and have limited access to green spaces and natural resources. This environmental injustice is a result of historical and ongoing policies that have marginalized these societies,

⁵ See the Report *Conserving and restoring America the beautiful*, 2021 of the US Department of Interior, available online: <https://www.doi.gov/sites/default/files/report-conserving-and-restoring-america-the-beautiful-2021.pdf>.

restricting their access to clean air, clean water, and opportunities for outdoor recreation.

Addressing environmental injustice requires a comprehensive approach that tackles the root causes of the problem. This includes reforming policies that perpetuate inequality, investing in green infrastructure in disadvantaged communities, and promoting equitable access to nature. Through the implementation of these measures, Biden presidency envisions a future wherein all individuals have the opportunity to prosper in a healthy and sustainable setting.

In short, we must observe that the Biden administration has advanced an unprecedented climate, clean energy, and environmental justice agenda to accelerate progress toward securing access to clean air and safe water, affordable and clean renewable energy, and climate-resilient and healthy communities for all Americans.

From its first week in office, the Biden administration has described “environmental justice” as one of its top priorities. During his campaign, President Biden promised a place for environmental justice in his White House agenda, which developed into a highly proactive plan for advancing environmental justice when he came to office in 2021. This proactivity came as no surprise, as environmental justice was a significant campaign issue, and many environmental justice communities expected tangible results from the Biden Administration, hoping it would make up for what was largely viewed as years of only modest attention to the issues of concern to overburdened communities.

In 2021, the Environmental Protection Agency (“EPA”) published data revealing that non-white people are many times more likely to be exposed to heavy pollution than white people.⁶ Individuals regularly exposed to environmentally hazardous sites risk developing long-term, life-threatening health problems. In the context of polluting facilities in disproportionately minority groups, siting issues often involve disparate impact—a disproportionate amount of toxic and polluting facilities near non-white communities compared to predominately white ones. In most cases of environmental racism, plaintiffs lack evidence to show the government intentionally sited a polluting facility near a minority community.

Since the beginning of their term, President Biden and Vice President Harris have been committing to ensuring that the voices, perspectives, and lived realities of communities with environmental justice concerns are heard in the White House and reflected in Federal policies, investments, and decisions. The Executive Order 14008 of 2021 on Tackling the Climate Crisis at Home and Abroad created the first-ever White House

⁶ For C. W. Tessum, D. A. Paolella, S. E. Chambliss, J. S. Apte, J. D. Hill, J. D. Marshall, *PM2.5 Polluters Disproportionately and Systemically Affect People of Color in the United States*, in 7 *Science. Advance* 1 (2021) «Racial-ethnic minorities in the United States are exposed to disproportionately high levels of ambient fine particulate air pollution (PM_{2.5}), the largest environmental cause of human mortality»; see also S. A. Colangelo, *Bridging Silos: Environmental and Reproductive Justice in the Climate Crisis*, in 112 *Calif. L. Rev.* 1255 (2024), who identifies an intersectional nexus of hazard between environmental and reproductive justice, which is especially acute for women of color living in under-resourced communities.

Environmental Justice Advisory Council that is charged with providing independent advice and recommendations on how to address current and historic environmental injustice.⁷

The President signed two "day one" Executive Orders on environmental justice, prioritizing the issue and connecting it with climate change. Flowing from these actions were: 1) the development of the *Justice40 initiative*,⁸ to ensure that 40% of the benefits of federal environmental programs be directed to disadvantaged communities; 2) the creation of the White House Environmental Justice Advisory Committee; 3) and the directive to create the Climate and Economic Justice Screening Tool ("CEJST"), an interactive mapping tool to identify disadvantaged societies that are marginalized by underinvestment and overburdened by pollution.

As it is read on the official White House website, the *Justice40 Initiative*⁹ has focused on investing in disadvantaged communities across seven key areas: climate change mitigation and adaptation; clean energy and energy efficiency; clean transportation; affordable and sustainable housing; job training and workforce development; remediation and reduction of legacy pollution; clean water infrastructure.

⁷ See, *Response by the White House Council on Environmental Quality to the White House Environmental Justice Advisory Council's Final Recommendations: Justice40, Climate and Economic Justice Screening Tool, and Executive Order 12898 Revisions that were submitted on May 21, 2021*, Report submitted to the U.S. Congress pursuant to the Federal Advisory Committee Act, May 20, 2022, available online: www.epa.org.

⁸ See, *Justice40 Initiative | Environmental Justice*, www.whitehouse.org.

⁹ To study more, see, S. Conley, D. M. Konisky, M. Mullin, *Delivering on Environmental Justice? U.S. State Implementation of the Justice40 Initiative* in 53(3) *Publius* 349 (2023). For a critical vision, see D. Erdenesanaa, *Signature Biden Program Won't Fix Racial Gap in Air Quality, Study Suggests* in *The New York Times*, July 20, 2023, who observed that the White House aimed for a race-neutral environmental justice strategy, but a new analysis questions whether the program can actually achieve its goals. The White House's guidelines for federal agencies allow them to target specific locations and populations within the broader category of "disadvantaged communities" and not the specific key factor of "race". A spokesperson for the White House Council on Environmental Quality argued that the study presented a hypothetical scenario where air quality investments were made randomly, without considering the actual sources of pollution. However, critics, including activists and researchers, have pointed out the omission of race as a key factor in the primary screening tool. Manuel Salgado, a research analyst at WE ACT for Environmental Justice, emphasized that race is the most significant factor influencing air quality in the United States.

Along the same critical lines, see also C. Nyman, *"Don't say Race:" Why is Biden Taking a Colorblind Approach to Environmental Justice?* in *PIRL* (2022).

See also L. Cormany, *Standing in the Way of Environmental Justice*, in 1 *Utah L. Rev.*, 167 (2024) who noted that private citizens should have the right to sue over the placement of hazardous facilities. Exposure to these facilities can lead to serious health problems like cancer and birth defects, and victims deserve their day in court. While government agencies and community groups are working to improve the situation, the legal system can play a crucial role. To empower citizens, lawmakers should create specific laws that allow them to take legal action against discriminatory siting practices. This could involve amending existing laws like the Fair Housing Act and strengthening recent environmental justice initiatives.

To implement this ambitious initiative (on which, however, there has been no lack of critical voices),¹⁰ the Biden administration has transformed numerous federal programs to ensure that deprived communities receive a significant portion of federal investments. This unprecedented commitment to environmental justice is driven by the President's Investing in America agenda, which includes the Inflation Reduction Act, Bipartisan Infrastructure Law, and American Rescue Plan. These historic investments aim to address decades of underinvestment in disadvantaged communities and provide critical resources to those burdened by pollution and environmental hazards.

The Environmental Protection Agency (EPA) has taken significant strides to empower underprivileged people to address environmental and climate justice issues.¹¹ Through the Environmental and Climate Justice Community Change Grants program, the EPA has allocated substantial funding to local, non-profit organizations. This direct investment enables these organizations to develop strategies for reducing pollution and promoting clean energy initiatives. By empowering communities to take the lead, the EPA aims to create more equitable and sustainable environments.

Recognizing the importance of youth engagement, the EPA has also established the National Environmental Youth Advisory Council (NEYAC). This council, composed of young leaders from diverse backgrounds, provides a platform for young people to share their perspectives and contribute to environmental decision-making. By involving youth in the

¹⁰ J. B. Meigs, *The Big Squeeze: How Biden's Environmental Justice Agenda Hurts the Economy and the Environment*, Manhattan Institute, September 7, 2023, available at: <https://manhattan.institute/article/how-bidens-environmental-justice-agenda-hurts-economy-and-environment>, observes that new regulations are creating bureaucratic hurdles for both government agencies and businesses. Biden's ambitious climate plans aim to stimulate significant investment in infrastructure, but stricter environmental regulations could slow down project approvals, despite calls for streamlining the process.

C. Cecot, *Efficiency and Equity in Regulation* in 54 *Env't L. Rep.* 10693 (2024) highlights the need to balance efficiency and equality. The Author observes that the Biden Administration has signaled a commitment to ensuring that regulations benefit vulnerable and disadvantaged communities. On the contrary, past administrations have prioritized regulatory efficiency, maximizing overall societal benefits, without considering distributional impacts. Advocates of the current approach fear that pursuing equity will significantly undermine efficiency, ultimately harming everyone.

S. Conley, D. M. Konisky, M. Mullin, *Delivering on Environmental Justice? U.S. State Implementation of the Justice40 Initiative*, in 53(3) *Publius* 349 (2023), observes that conceived as a whole-of-government initiative across federal agencies and programs, Justice40 ultimately relies on States for much of its implementation. In a system of multilevel, networked governance, States often play a critical role in executing federal policy. Nevertheless, for the Authors, despite outspoken resistance to the initiative from many Republican governors, there has been only modest differences between states in Justice40 implementation based on the partisanship of gubernatorial leadership.

¹¹ Read the Cliff Villa's speech at the University of Memphis Law Review Symposium on February 16, 2024. He talked about the history of environmental justice at the EPA, current policies, and the agency's work with marginalized communities. He also unveiled new EPA rules to advance environmental equity. C. J. Villa, *A New Day For Environmental Justice at the U.S. EPA*, in 54 *Univ. Memphis Law Rev.* 867 (2024).

environmental policy process, the EPA is fostering the next generation of environmental stewards and ensuring that their voices are heard.

In the last year of his administration, Biden has also demonstrated a commitment to addressing the environmental and social impacts of the fossil fuel industry. On January 2024, his administration paused new LNG export projects, signaling a shift towards a more rigorous evaluation process. This move aimed to mitigate the negative consequences of these projects, particularly for frontline communities. By prioritizing the needs of these communities and holding polluting industries accountable, the administration is taking important steps to protect public health and the environment.

It is crucial that the administration continues to prioritize environmental justice and climate action. Through the implementation of these measures, the administration envisions a future wherein all individuals have the opportunity to prosper in a healthy and sustainable setting.

4. Environmental justice and the Executive order 14096

In the last two years of his presidency and to continue delivering on his environmental justice vision, President Biden signed Executive Order 14096 on Revitalizing Our Nation's Commitment to Environmental Justice for All in April 2023 which reinforces and builds on previous Executive Orders (e.g., EO 14008, Tackling the Climate Crisis at Home and Abroad, and EO 12989, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations) and initiatives (e.g., *Justice40*), and the DOJ Environmental Justice Enforcement Strategy.

This new, last order established that the Interagency Council on Environmental Justice (IAC) is tasked with supporting and facilitating interagency collaboration on programs and activities related to environmental justice. This includes developing materials for environmental justice training to enhance the capacity of Federal employees in advancing environmental justice and to increase the meaningful participation of individuals from communities with environmental justice concerns in Federal activities.

The principle of environmental justice, which advocates for the equitable distribution of environmental benefits and burdens, has emerged as a critical concern in the United States. Executive Order 14096, signed by President Biden in 2023, marks a significant step towards addressing environmental injustices and promoting equity.

Historically, marginalized communities, particularly non-white people¹² and low-income people, have borne the brunt of environmental

¹² W. C.C. Kemp-Neal, *Environmental Racism: Using Environmental Planning to Lift People Out of Poverty, and Re-shape the Effects of Climate Change & Pollution in Communities of Color*, in 32 *Fordham Env'tl. L. Rev.* 295 (2021), highlighted: «Environmental justice advocates argued that in order to meaningfully fight climate change and environmental destruction the conversation must include policy changes to address the disparate impact climate change and environmental abuse has on low income communities of color»; T. Yang, *Old and New Environmental Racism*, in 1 *Utah L. Rev.* 109 (2024); J.H. Knox, N. Tronolone, *Environmental Justice as Environmental Human Rights*, in 57

pollution and degradation.¹³ This disproportionate burden is often rooted in systemic racism, discriminatory zoning practices, and the unequal distribution of resources. The consequences of environmental injustice are far-reaching, including adverse health impacts, reduced property values, and limited economic opportunities.

Executive Order 14096, signed by President Biden in 2023, represents a significant milestone in the United States' commitment to environmental justice. This order provides a comprehensive framework for addressing environmental inequities and ensuring that all communities, regardless of race, ethnicity, or socioeconomic status, have the right to a healthy environment.

One of the most notable aspects of the order is its expanded definition of environmental justice. The order defines environmental justice as «the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies». This definition goes beyond traditional notions of environmental justice which often focus on racial and socioeconomic disparities. By including Indigenous populations and individuals with disabilities, the order acknowledges the diverse range of communities that are disproportionately impacted by environmental pollution and climate change.

More in particular, the order establishes:

«The just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices».

A significant change in this definition is the replacement of the phrase «disproportionately high and adverse» (Executive order 12898, *Federal*

Vanderbilt Journal of Trans. L. 673 (2023); nonetheless, E. K. Yamamoto, J.-L. W. Lyman, S. K. Serrano, *Racializing Environmental Justice*, 92 *University of Colorado. L. Rev.* 1383 (2021) note that «established environmental justice framework tends to treat racial minorities as interchangeable and to assume for all communities of color that health and [equal] distribution of environmental burdens are main concerns. For some racialized communities, however, ... and particularly for some indigenous peoples, environmental justice is mainly about cultural and economic self-determination [rather than equal treatment] and belief systems that connect their history, spirituality, and livelihood to the natural environment».

¹³ K. Williams, *The Impact of Foresight: Reframing Discriminatory Intent to Properly Remedy Environmental Racism*, in 59 *Hous. L. Rev.* 1231 (2022), notices that for too long, minority communities have been forced to accept the consequences of living near landfills, hazardous waste sites, industrial facilities, contaminated water sources, and other locally undesirable land uses at higher rates than non minority communities.

Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 16, 1994) with «disproportionate and adverse». This modification removes the requirement for disproportionate impacts to be “high” thereby broadening the scope of environmental justice considerations. This expanded definition now encompasses climate change, health risks, and cumulative impacts, allowing for a more comprehensive approach to addressing environmental injustices.

Furthermore, the order emphasizes the importance of addressing cumulative impacts and the legacy of environmental racism. Cumulative impacts refer to the combined effects of multiple environmental stressors, such as air pollution, water pollution, and noise pollution. These cumulative impacts can have severe health consequences for communities, particularly those that are already marginalized. By recognizing the historical and ongoing injustices faced by certain groups, the order aims to rectify past wrongs and prevent future harm.

Another key provision of the order is the requirement for federal agencies to consider environmental justice in all their decisions. This means that agencies must assess the potential impacts of their actions on disadvantaged communities and take steps to mitigate any adverse effects. Additionally, the order calls for increased public participation in environmental decision-making, ensuring that community members have a voice in shaping policies that affect their lives. To bolster public safety and environmental health, it's in fact imperative to improve communication between government agencies and affected groups during toxic substance releases. In the event of such an incident at a federal facility, prompt notification and public meetings are essential to inform the public about potential health risks and necessary precautions. This proactive approach will empower communities to take steps to protect themselves and their families.

Furthermore, it's crucial to strengthen the relationship between agencies and communities to address and dismantle historical barriers to participation. These barriers, often rooted in systemic racism, have prevented marginalized people from having a meaningful voice in decision-making processes. By actively engaging with communities and recognizing the importance of Tribal consultation, agencies can work towards a more equitable and just future.

To achieve these goals, the order establishes an Interagency Council on Environmental Justice, which is tasked with coordinating federal efforts to advance environmental justice. The council will develop strategies to address environmental inequities, promote community engagement, and improve data collection and analysis. To better understand and address environmental injustices, it is in fact essential to identify and fill data gaps. Providing communities with access to the most recent scientific research and data can empower them to defend their rights and hold those accountable for pollution and environmental degradation. The creation of a new Environmental Justice Subcommittee within the National Science and Technology Council could be instrumental in coordinating these efforts.

To ensure a comprehensive and coordinated approach to environmental justice, the White House has created a dedicated Office of Environmental Justice within the Council on Environmental Quality. Led

by a Federal Chief Environmental Justice Officer, this office will work across all federal agencies to implement effective policies and programs.

While Executive Order 14096 is a promising step forward, significant challenges remain. Implementing the order will require sustained effort, collaboration between federal, State, and local governments, and active engagement with communities. To ensure lasting change, it is essential to address the root causes of environmental injustice, such as systemic racism, economic inequality, and lack of access to environmental information.

By prioritizing environmental justice, the United States would have the possibility to create a more equitable and sustainable future for all.¹⁴ Executive Order 14096 has, in fact, provided a roadmap for achieving this goal, but it will require continued vigilance and advocacy to ensure that the order's promises are fulfilled.

5. The Executive Order reaffirms the whole-of-government approach to environmental justice

Once more in search of the aforementioned continuity, President Biden has also adopted a “whole-of-government approach”¹⁵ to address environmental and climate justice. Considering environmental justice as a priority of his administration, Biden has, in fact, employed in his public plans a “whole of government” approach that seeks to use environmental justice, as well as climate, to drive decision-making across all the agencies and sectors, which includes directing resources to historically underserved and overburdened populations.

The White House has distinctly stated the Executive Order makes clear that the pursuit of environmental justice is a duty of all executive branch agencies and should be incorporated into their missions. The Executive Order (EO) has established sweeping measures to institutionalize environmental justice across federal agency processes, including compliance monitoring, permitting, funding distribution, rulemaking, and environmental enforcement. Overseen by the newly established Office of

¹⁴ About the strict connection between environmental justice and sustainability, see A. D. Dunn, *At the Intersection of Environmental Justice and Sustainability Lies a More Equitable, Healthy Future for U.S. Communities*, 92 UMKC L. Rev. 773, 786 (2024) who observes: «By connecting environmental justice with sustainability, and putting both movements front and center as communities address their futures, opportunities will present themselves for the U.S. to create and advance more equitable, livable, and holistic communities. Sustainability alone will achieve many important goals for our use of natural resources, land redevelopment, climate, and resilience. Environmental justice will achieve dramatic advances for overburdened populations seeking fairness, a voice in decision making, and an opportunity to influence how they and their children will live in their communities for the future».

¹⁵ Z. Handelman, *Tracking the Biden Administration's Whole-of-Government Approach to Equity and Environmental Justice* in *Vermont J. Environ. Law* (2022), available at: <https://vjel.vermontlaw.edu/top-ten/2021/12/tracking-the-biden-administrations-whole-of-government-approach-to-equity-and-environmental-justice/>; J. Skinner-Thompson, *Procedural Environmental Justice*, 97 Wash. L. Rev. 399 (2022); S. Conley, D.M. Konisky, M.Mullin, *Delivering on Environmental Justice? U.S. State Implementation of the Justice40 Initiative*, cit.

Environmental Justice in the White House (a government body coordinating federal agencies to advance environmental justice), federal agencies have been required to implement significant systematic changes to better advance environmental justice and were held accountable for their progress.

More specifically, by promoting a whole-of-government approach, the executive order 14096 has aimed to:

1) Ensure Consistency: a unified approach ensures that environmental justice principles are applied consistently across all federal agencies, preventing inconsistencies and loopholes.

2) Maximize Impact: by leveraging the resources and expertise of multiple agencies, the government can achieve a more significant and lasting impact on environmental justice issues.

3) Strengthen Collaboration: fostering collaboration among agencies can lead to more innovative and effective solutions, as well as sharing of best practices and resources.

4) Enhance Public Trust: a whole-of-government approach demonstrates a clear commitment to environmental justice and can help build trust between federal agencies and communities.

In sum, by adopting this holistic approach and amplifying the whole-of-government environmental justice agenda, the Biden administration has sought to address the root causes of environmental injustice, with the stated goal of ensuring a more equitable and sustainable future for all.

6. Conclusions

Executive Order 14096 is a positive step towards environmental justice, but significant challenges remain. Effective implementation will require sustained effort, cooperation between various levels of government, and meaningful community engagement. Addressing the root causes of environmental injustice, such as systemic racism and economic inequality, is also crucial.

Many efforts have been made but for some,¹⁶ not enough. For example, concerns have been raised about the potential misalignment of certain federal actions with the goals of meeting the needs of environmental justice communities. It is, in fact, very important that disadvantaged communities have assurance that federal investments will be distributed to them through transparent and well-established processes, policies, and mechanisms.

The concerns raised by these communities underscore the urgent need for ongoing public scrutiny and meaningful engagement from those who are impacted and are the intended beneficiaries. Furthermore, it is crucial that there be coordination among government jurisdictions to ensure that federal

¹⁶ See, L. W. Coleman, *The Biden Administration's Environmental Justice Progress*, February 13, 2024, available at: <https://ehsdailyadvisor.blr.com/2024/02/the-biden-administrations-environmental-justice-progress/>; for T. Yang, *Old and New Environmental Racism*, cit., the EPA's long history of starts and stops in addressing environmental justice issues, including civil rights enforcement, suggest caution with respect to expectations of durability and the depth of change in agency culture.

actions are effective in addressing the historical injustices suffered by underserved and marginalized communities. It is only with these measures in place that we can hope for a future where the most vulnerable have a voice and their needs are met with the urgency and compassion they deserve.

To further advance environmental justice, the following actions should be prioritized and incentivized:

- 1) Community Empowerment: strengthen communities to participate in decision-making and advocate for their rights.
- 2) Green Infrastructure Investment: invest in green infrastructure projects to improve air and water quality and mitigate urban heat island effects.
- 3) Support for Environmental Justice Organizations: provide adequate funding and resources to support their work.
- 4) Education and Make Aware: educate the public about environmental justice issues and promote environmental literacy.

By taking these steps, the United States could work (or maybe, might have worked, given the change of Presidency) towards a future where all the groups have the right to a healthy and sustainable environment. Undoubtedly, Executive Order 14096 has offered a solid foundation for this endeavour and its successful implementation is critical to the nation's environmental justice efforts.

While Executive Order 14096 provided a solid foundation for environmental justice, the change of presidency and possible election of Trump pose a significant threat to these efforts. Since the beginning of his election campaign, Trump has in fact openly declared his intention to dismantle the environmental initiatives implemented by the Biden administration. This raises concerns about the future of environmental policy and the potential reversal of progress made in recent years.

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