



## Progressive Federalism

Nearly a century ago, Justice Brandeis, speaking of the division of power between the federal government and the states enshrined in the U.S. Constitution, famously wrote that “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”<sup>1</sup> This notion of the states as “laboratories of democracy” is rooted in the Tenth Amendment’s directive that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” At a time when the federal government seems single-mindedly dedicated to revanchist policies, these laboratories of democracy could offer a path toward more progressive policies in a range of areas.

### I. Reclaiming Federalism

#### A. Federalism’s Dark History

While the Tenth Amendment provides a potential framework for a progressive federalist agenda, too often it has been invoked to promote a vision of states’ rights that justifies some of the most horrific actions in our country’s history. Supporters of the “Lost Cause” narrative, for instance, argue that the Civil War was fought over states’ rights and not slavery. Historian Paul Finkelman, however, points out that when South Carolina seceded from the Union over states’ rights, “the specific right in question concerned the ownership of human chattel.”<sup>2</sup> One of the South’s main complaints was that “the northern states would not vigorously cooperate in the return of fugitive slaves . . . . In other words, for South Carolina, slavery and states’ rights were not mutually exclusive; in fact, they were the same thing.”<sup>3</sup> Nearly one hundred years after the end of the Civil War, states were still using states’ rights arguments to defend discrimination against African-Americans in the form of Jim Crow laws.<sup>4</sup> And only a few years ago, the

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<sup>1</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

<sup>2</sup> Paul Finkelman, [States’ Rights, But to What?](#), N.Y. TIMES (Dec. 20, 2010, 9:00 PM).

<sup>3</sup> *Id.*

<sup>4</sup> Heather Gerken & Joshua Revesz, [Progressive Federalism: A User’s Guide](#), DEMOCRACY J. (2017).

Supreme Court relied on federalism and states' rights arguments to gut the Voting Rights Act and remove a vital protection against minority voter disenfranchisement.<sup>5</sup>

Federalism's ugly past, however, does not have to be federalism's future.

Some argue that federalism is morally neutral, has no political valence, and, in fact, can be used to further progressive policies.<sup>6</sup> This can be seen in areas as diverse as state decriminalization of marijuana and state programs to expand the availability and affordability of health insurance through the Affordable Care Act.<sup>7</sup> In the face of federal recalcitrance, "progressive federalism empowers democratically accountable governments to meet the needs of the people while ensuring human rights for all" in a variety of areas, including immigration, voting rights, the environment, and police accountability, all of which this Program Guide examines in more detail.<sup>8</sup>

## B. Federal Preemption

A federal government hostile to state and local progressive policies has its own powerful tool in the Supremacy Clause. Federal preemption—the idea that federal law displaces state law when the two conflict—is rooted in Article VI of the U.S. Constitution, which states, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." Relying on the Supremacy Clause, the Supreme Court has noted that "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield."<sup>9</sup> Therefore, "state laws that 'interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution' are invalid."<sup>10</sup> The Supreme Court has extended this doctrine to local ordinances as well, holding, "the constitutionality of local ordinances is analyzed in the same way as that of statewide laws."<sup>11</sup> In short, when Congress passes federal laws while acting within its constitutional powers, any state or local laws that are contrary to or otherwise in conflict with federal laws are deemed preempted and therefore invalid.

Federal preemption comes in two forms: express preemption and implied preemption.<sup>12</sup> Express preemption exists where "Congress includes within a statutory scheme a provision that

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<sup>5</sup> See *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

<sup>6</sup> Gerken & Revesz, *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> Robert A. Schapiro, *Not Old or Borrowed: The Truly New Blue Federalism*, 3 HARV. L. & POL'Y REV. 33, 40 (2009).

<sup>9</sup> *Gade v. Nat'l Solid Wastes Management Ass'n*, 505 U.S. 88, 109 (1992) (citation omitted).

<sup>10</sup> *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 604 (1991) (citation omitted).

<sup>11</sup> *Hillsborough Cnty., Fla. v. Automated Med. Labs., Inc.* 471 U.S. 707, 713 (citation omitted). While this Program Guide focuses on the relationship between the federal government and states and between the federal government and cities, there are also preemption issues at play between states and cities themselves. For a discussion of this topic see Richard Briffault et al., [The Troubling Turn in State Preemption: The Assault on Progressive Cities and How Cities Can Respond](#), ACS ISSUE BRIEF (Sept. 2017).

<sup>12</sup> *Gade*, 505 U.S. at 98.

explicitly directs that state law shall be preempted.”<sup>13</sup> In contrast, implied preemption occurs when Congress is silent as to where it intended to preempt state law, but its actions either evince an intent to preempt or are wholly incompatible with state action. These two types of implied preemption are known as field preemption and conflict preemption.<sup>14</sup> Field preemption occurs when “Congress has chosen to oust the states from a given regulatory arena, to permit an exclusively national and unitary regulatory regime to function.”<sup>15</sup> Conflict preemption occurs where “‘compliance with both federal and state regulations is a physical impossibility,’ or where state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”<sup>16</sup> States and the federal government can—and often do—come into conflict when it is unclear what Congress intended or whether a state’s policies directly conflict with federal policies. In these cases, federal courts must step in and resolve these disputes.

This Program Guide will highlight four areas where federalism may permit states and localities to pursue progressive policy goals: immigration, voting rights, environmental policy, and police accountability. It will also consider some of the arguments for and against preemption that the federal government, states and cities may raise in pending or anticipated litigation seeking to resolve preemption disputes.

### C. Resources

- [Progressive Federalism: A New Way Forward?](#), ACS Convention Panel (June 9, 2017).
- Richard Briffault et al., [The Troubling Turn in State Preemption: The Assault on Progressive Cities and How Cities Can Respond](#), ACS Issue Brief (Sept. 2017).
- Heather Gerken & Joshua Revesz, [Progressive Federalism: A User’s Guide](#), DEMOCRACY J. (2017).
- S. Candice Hoke, *Preemption Pathologies and Civic Republican Values*, 71 B.U. L. REV. 685, 700 (1991).
- DOUGLAS T. KENDALL, REDEFINING FEDERALISM: LISTENING TO THE STATES IN SHAPING “OUR FEDERALISM” (2005).
- LENNY MENDONCA & LAURA TYSON, NEW AMERICA, [THE NEW ERA OF PROGRESSIVE FEDERALISM](#) (2018) (highlighting examples of resistant and cooperative federalism).
- ERIN RYAN, FEDERALISM AND THE TUG OF WAR WITHIN (2011).
- Robert A. Schapiro, [Not Old or Borrowed: The Truly New Blue Federalism](#), 3 HARV. L. & POL’Y REV. 33, 40 (2009).

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<sup>13</sup> S. Candice Hoke, *Preemption Pathologies and Civic Republican Values*, 71 B.U. L. REV. 685, 700 (1991); see also Betsy J. Grey, *Make Congress Speak Clearly: Federal Preemption of State Tort Remedies*, 77 B.U. L. REV. 559 (1997).

<sup>14</sup> Hoke, *supra* note 13, at 700.

<sup>15</sup> *Id.*

<sup>16</sup> *Gade*, 505 U.S. at 98 (citation omitted).

## II. Immigration

In general, the federal government has primary authority for the regulation of immigration. The Supreme Court has noted that, “[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”<sup>17</sup> This power is rooted in the U.S. Constitution, which authorizes the federal government to “establish an uniform Rule of Naturalization.”<sup>18</sup> In his 2012 opinion striking down most of Arizona’s controversial immigration law, SB 1070, Justice Kennedy wrote, “[t]he federal power to determine immigration policy is well settled.”<sup>19</sup>

While the federal government has the power to determine immigration policy, its power to regulate immigration and impact the lives of immigrants is far from absolute. “Traditionally, states exercise police power over health, safety, morals, and general welfare. These areas include regulation over family relations and criminal law. As immigration increasingly touches on these areas, the boundaries between federal and state authority become muddled.”<sup>20</sup> For example, state law determines who is entitled to a professional license, to state and local benefits, and who constitutes a family. States also wield broad authority with respect to employment arrangements and the investigation and prosecution of workplace and other crime, all of which may affect immigrant communities.<sup>21</sup> And the ways in which states frame their criminal penalties may have serious consequences for immigrants under federal immigration law.

An examination of the litigation surrounding SB 1070, compared with more recent litigation concerning sanctuary cities and states, helps to illustrate the contours of federal and state authority in this space.

### A. Arizona’s SB 1070—“Show Me Your Papers”

In 2010, amid a national debate over undocumented immigration in which several states and localities decided to take immigration enforcement into their own hands by passing draconian immigration measures, Arizona enacted [SB 1070](#), the controversial “show me your papers” law. Characterized as a response to the state’s frustration at the lack of progress on federal immigration reform, SB 1070 “establish[ed] an official state policy of ‘attrition through enforcement’”<sup>22</sup> and required police to investigate the immigration status of anyone they stopped if they had reasonable suspicion to believe the individual was in the country illegally.

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<sup>17</sup> *Arizona v. United States*, 567 U.S. 387, 394 (2012).

<sup>18</sup> U.S. CONST. art. I, § 8, cl. 4.

<sup>19</sup> *Arizona v. United States*, 567 U.S. at 394.

<sup>20</sup> Leticia M. Saucedo, [States of Desire: How Immigration Law Allows States to Attract Desired Immigrants](#), 52 U. CAL. DAVIS L. REV. 471, 485 (2018).

<sup>21</sup> Jonathan Miller, [Beyond the Courts: The Role of State and Local Governments in Supporting Immigrant Communities in the Trump Era](#), ACSBLOG (July 17, 2018).

<sup>22</sup> *Arizona v. United States*, 567 U.S. at 393.

In addition, the law sought to criminalize violations of federal law that required non-citizens to register and carry immigration documents, made it a misdemeanor for undocumented immigrants to seek work in Arizona, and allowed Arizona law enforcement to arrest people without a warrant if the officer had probable cause to believe that a person committed a deportable offense.<sup>23</sup>

The United States sued Arizona, arguing that federal immigration law preempted SB 1070 because:

[t]he framework that the Constitution and Congress have created does not permit the States to adopt their own immigration programs and policies or to set themselves up as rival decisionmakers based on disagreement with the focus and scope of federal enforcement. Yet that is precisely what S.B. 1070 would do, by consciously erecting a regime that would detain, prosecute, and incarcerate aliens based on violations of federal law but without regard to federal enforcement provisions, priorities, and discretion.<sup>24</sup>

The Supreme Court agreed with the federal government's position with regard to three of the law's four challenged provisions, explaining that "[t]he intent to displace state law altogether can be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'"<sup>25</sup> However, the Court declined to strike down the "show me your papers" provision, finding that prior to implementation of the law, and without a definitive interpretation by state courts of what the provision actually required, it would not find an unavoidable conflict between the state law and federal law. The Court thus rejected the federal government's argument that the provision necessarily was "squarely contrary to Congress's direction to prioritize the removal of criminal aliens . . . and to DHS's resulting enforcement priorities."<sup>26</sup>

## B. Sanctuary Cities and States

### 1. Background Principles

Unlike Arizona's attempt to insert itself into the immigration enforcement regime, progressive states and cities seeking to resist the Trump administration's harsh treatment of immigrants are engaging in what some commentators refer to as "uncooperative federalism,"<sup>27</sup> by arguing that they have no affirmative duty to enforce federal immigration law. There are a variety of

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<sup>23</sup> Gabriel J. Chin, Toni M. Massaro, & Marc L. Miller, [The Constitutionality of Arizona SB 1070 and Other State Immigration Laws](#), ACS ISSUE BRIEF (Nov. 2010) (citing ARIZ. REV. STAT. ANN. § 13-1509 (2010)).

<sup>24</sup> Brief for the United States at 22, *Arizona v. United States*, 567 U.S. 387 (No. 11-182), 2012 WL 939048.

<sup>25</sup> *Arizona v. United States*, 567 U.S. at 399.

<sup>26</sup> Brief for the United States at 47, *Arizona v. United States*, 567 U.S. 387 (No. 11-182), 2012 WL 939048.

<sup>27</sup> Heather Gerken, [We're About to See States' Rights Used Defensively Against Trump](#), VOX (Jan. 20, 2017, 2:14 PM).

measures states and cities have taken to advance their interests in encouraging undocumented immigrants to report crime and assist with police investigations and in protecting immigrants from exploitation.<sup>28</sup> For example, some cities, including Los Angeles, have a policy “prohibiting police from engaging in enforcement activities based solely on a person's immigration status.”<sup>29</sup> By taking such steps, these cities assert they are doing their job to maintain broader public safety. Localities that refuse to cooperate with the federal government’s immigration priorities have become known as “sanctuary cities” or “sanctuary states.” These terms, however, carry no legal meaning.<sup>30</sup> Broadly, sanctuary cities and states refuse to “fully cooperate with federal efforts to find and deport unauthorized immigrants.”<sup>31</sup>

Without local law enforcement agencies’ cooperation, enforcing federal immigration laws is difficult.<sup>32</sup> Despite the federal government’s reliance on localities for cooperation, local law enforcement are not required to help the federal government.<sup>33</sup> In fact, the “Supreme Court has repeatedly ruled that the federal government may not ‘commandeer’ state and local officials by compelling them to enforce federal law.”<sup>34</sup> This principle, which is rooted in the Tenth Amendment, is often referred to as the anti-commandeering doctrine. In *Printz v. United States*, the late Justice Antonin Scalia wrote that the purpose of this doctrine is the “[p]reservation of the States as independent and autonomous political entities.”<sup>35</sup>

## 2. The Trump Executive Order and Resulting Litigation

In his first month in office, President Trump signed [Executive Order 13768](#), which sought to withhold certain federal grants from sanctuary cities and states that refused to assist in enforcing federal immigration law.<sup>36</sup> Specifically, Executive Order 13768 stated that the Attorney General “shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed

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<sup>28</sup> Chuck Wexler, [Police Chiefs Across the Country Support Sanctuary Cities Because They Keep Crime Down](#), L.A. TIMES (Mar. 6, 2017, 4:00 AM).

<sup>29</sup> *Id.*

<sup>30</sup> Dara Lind, [Sanctuary Cities, Explained](#), VOX (Mar. 8, 2018, 12:00 PM).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Illya Somin, [Why Trump’s Executive Order on Sanctuary Cities is Unconstitutional](#), WASH. POST (Jan. 26, 2017).

<sup>35</sup> *Printz v. United States*, 521 U.S. 898, 919 (1997). Sanctuary states and cities may also find support for their position in the Supreme Court’s decision in *NFIB v. Sebelius*, which struck down as unconstitutional the Affordable Care Act’s requirement that states accept additional federal funding to expand Medicaid coverage or risk forfeiting existing Medicaid funding. *NFIB v. Sebelius*, 567 U.S. 519, 576-77 (2012). In his opinion, Chief Justice Roberts noted that the Court has long “recognized limits on Congress’s power under the Spending Clause to secure state compliance with federal objectives.” *Id.* at 576. To the extent that sanctuary states and cities did not “voluntarily and knowingly accept” the requirement that they cooperate with federal immigration enforcement efforts in order to receive pre-existing federal grant money, the federal government cannot “penalize States that choose not to participate in any new [enforcement] program by taking away their existing [ ] funding.” *Id.* at 577, 585.

<sup>36</sup> Exec. Order 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

necessary for law enforcement purposes.”<sup>37</sup> Section 1373 pertains to the communication between government agencies and the Immigration and Naturalization Service and says notwithstanding other laws that, “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”<sup>38</sup> Two months later, then-Attorney General Jeff Sessions announced a new Department of Justice (DOJ) policy, declaring that any states and local jurisdictions that “do not abide by the Department of Justice’s rules regarding the harboring of undocumented immigrants will not receive federal grant money.”<sup>39</sup>

A number of lawsuits have been filed challenging Executive Order 13768. In January 2017, the city and county of San Francisco sued the Trump administration, arguing that the executive order violated the Tenth Amendment and interfered with “a local government’s autonomy to devote resources to local priorities and to control the exercise of its own police powers, rather than being forced to carry out the agenda of the Federal government.”<sup>40</sup> Santa Clara County later joined the suit, and in November 2017, Judge William Orrick agreed with the localities, finding that “[f]ederal funding that bears no meaningful relationship to immigration enforcement cannot be threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves.”<sup>41</sup> In August 2018, the Ninth Circuit upheld the district court’s substantive ruling, although it rejected the court’s nationwide injunction.

In 2018, the Seventh Circuit Court of Appeals upheld a nationwide injunction won by the city of Chicago that prohibited the DOJ from withholding Byrne Memorial Justice Assistance Grants, which provide funding for criminal justice programs, in response to the city’s failure to cooperate in federal immigration enforcement. While the en banc court later narrowed the injunction’s application to just Chicago, it didn’t disagree with the panel’s conclusion that

[t]he Attorney General in this case used the sword of federal funding to conscript state and local authorities to aid in federal civil immigration enforcement. But the power of the purse rests with Congress, which authorized the federal funds at issue and did not impose any immigration enforcement conditions on the receipt of such funds.<sup>42</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> 8 U.S.C. § 1373.

<sup>39</sup> Sonam Sheth, [Jeff Sessions Slams ‘Sanctuary Cities’: No Federal Grant Money Without Compliance](#), BUSINESS INSIDER (Mar. 27, 2017, 4:23 PM).

<sup>40</sup> Complaint, [City & Cnty. of San Francisco v. Trump](#), 3:17-cv-00485 (N.D. Cal. Jan. 31, 2017).

<sup>41</sup> [Cnty. of Santa Clara v. Trump](#), No. 17-cv-00574-WHO, at \*4 (N.D. Cal. Nov. 11, 2017).

<sup>42</sup> [City of Chicago v. Sessions](#), No. 1:17-cv-05720, at \*3 (7th Cir. Apr. 19, 2018).

The Trump administration has also gone on the litigation offensive against sanctuary jurisdictions. In March 2018, the DOJ sued California over three laws it passed “that reflect a deliberate effort by California to obstruct the United States’ enforcement of federal immigration law, to regulate private entities that seek to cooperate with federal authorities consistent with their obligations under federal law, and to impede consultation and communication between federal and state law enforcement officials.”<sup>43</sup> In June 2018, a federal district court denied the United States’ motion for a preliminary injunction on the grounds that “[t]he laws make enforcement more burdensome than it would be if state and local law enforcement provided immigration officers with their assistance. But refusing to help is not the same as impeding.”<sup>44</sup> However, the judge enjoined part of California’s AB 450, holding that private employers could not be prosecuted for allowing federal immigration enforcement officials access to private workplace areas and employee records or verifying the employment eligibility of current employees. The case is now on appeal to the Ninth Circuit.

As further proof however, that federalism is ideologically neutral, it should be noted that one of the three laws upheld by the federal court in June was struck down by a California state court in September for violating the sovereign authority of a California “charter city.” Huntington Beach challenged the California Values Act (SB 54) on the grounds that it “prevents the City from spending general fund revenue on certain law enforcement activities, places additional burdens on the City’s police department by increased regular reporting requirements (to the State), and deems the City’s schools and libraries as sanctuaries.”<sup>45</sup> An Orange County Superior Court judge agreed with the city that the state law violated its right to local control, and the State has appealed.

### C. Discussion Questions

How can progressives reconcile the positions they advocated in the SB 1070 and sanctuary city litigations? Do we need to? Why are arguments in favor of sanctuary cities finding more favor with federal courts than did restrictive state immigration laws? Should a city be allowed to impede federal law enforcement objectives if it disagrees with them? What is the difference between refusing to cooperate and impeding? When are conditions on federal funding unconstitutionally coercive? Does the Court’s decision in *NFIB v. Sebelius* affect sanctuary jurisdictions’ claims that conditioning Byrne Justice Assistance Grant funding on cooperation with federal immigration enforcement violates the Spending Clause?

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<sup>43</sup> Complaint, [United States v. California](#), No. 18-264 (E.D. Cal. Mar. 6, 2018); see also Dara Lind, [Jeff Sessions’s Lawsuit Against California’s “Sanctuary” Laws, Explained](#), VOX (Mar. 7, 2018, 10:20 AM).

<sup>44</sup> Order Re: The United States of America’s Motion for Preliminary Injunction at 43, [United States v. California](#), No. 2:18-cv-490-JAM-KJN (E.D. Cal. July 5, 2018).

<sup>45</sup> Petitioner’s Memorandum of Points at 6, [City of Huntington Beach v. State of California](#), No. 30-2018-00984280 (Super. Ct. Cal. Sept. 27, 2018).



## D. Resources

- [ACS Podcast: San Francisco v. Trump: The Legality of Sanctuary Cities](#), ACS (Apr. 19, 2017).
- [City & Cnty. of San Francisco v. Sessions](#), No. 17-cv-04642-WHO, (N.D. Cal. Oct. 5, 2018).
- [City & Cnty. of San Francisco v. Trump](#), No. 17-1747, (9th Cir. Aug. 1, 2018).
- [U.S. v. California “Sanctuary” Lawsuit](#), EASTERN DISTRICT CAL. BLOG (last updated Aug. 8, 2018) (tracking updates in DOJ’s lawsuit against California re sanctuary city laws).
- Gabriel J. Chin, Toni M. Massaro, & Marc L. Miller, [The Constitutionality of Arizona SB 1070 and Other State Immigration Laws](#), ACS ISSUE BRIEF (Nov. 2010).
- Gabriel J. Chin & Marc L. Miller, [SB 1070 in the Supreme Court](#), ACSBLOG (Apr. 23, 2012).
- Pratheepan Gulasekaram, [No Exception to the Rule: The Unconstitutionality of State Immigration Enforcement Laws](#), ACS ISSUE BRIEF (Oct. 2011).
- Pratheepan Gulasekaram, [The Truth About the Administration’s Anti-Sanctuary Campaign](#) ACSBLOG (Oct. 18, 2018).
- Pratheepan Gulasekaram, Rick Su, & Rose Cuison Villazor, [Anti-Sanctuary & Immigration Localism](#), 118 COLUM. L. REV. (forthcoming 2019).
- Jonathan Miller, [Beyond the Courts: The Role of State and Local Governments in Supporting Immigrant Communities in the Trump Era](#), ACSBLOG (July 17, 2018).
- Cristina Rodriguez, [The Significance of the Local in Immigration Regulation](#), 106 Mich. L. Rev. 567 (2008).
- Leticia M. Saucedo, [States of Desire: How Immigration Law Allows States to Attract Desired Immigrants](#), 52 U. CAL. DAVIS L. REV. 471, 485 (2018).
- Richard C. Schragger, [The Attack on American Cities](#), ACSBLOG (June 14, 2018).
- Melissa L. Turcios, [Private: Sanctuary Cities and the Lie of Immigrant Criminality](#), ACSBLOG (Apr. 24, 2017).

## III. Voting Rights

Voting has been central to the struggle for civil rights in the United States for nearly two centuries, including as a key component of the post-Civil War Reconstruction Amendments<sup>46</sup> and the Civil Rights Movement.<sup>47</sup> Nevertheless, even fifty-three years after the passage of the Voting Rights Act of 1965, the right to vote remains under attack. In the past decade alone, there has been a wave of laws passed in states limiting the franchise and voter participation, including voter ID laws, limits to voter registration drives, and the shortening of early voting periods. Perhaps the biggest affront to voting rights since the 1960s came in 2013, when the Supreme Court, in a 5-4 ruling, held unconstitutional the coverage formula in § 4(b) of the Voting Rights Act, which determined those states and localities required to obtain preclearance

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<sup>46</sup> U.S. CONST. amends. XV, XIX, XXIV, XXVI.

<sup>47</sup> See, e.g., Voting Rights Act of 1965, 52 U.S.C. § 10101 *et seq.* (2016).

under § 5 from the Department of Justice or a panel of three judges from the D.C. District Court prior to making any changes to their voting processes.<sup>48</sup>

The 2016 presidential election was the first in fifty years held without the full protections of the Voting Rights Act,<sup>49</sup> and the results of that election have proven consequential for the future of voting rights. After his election, President Trump created and subsequently disbanded a bogus “voter integrity” commission<sup>50</sup> and directed the DOJ to reverse positions in several high-profile voting-rights lawsuits,<sup>51</sup> including now supporting Texas’s voter ID law and the voter roll purges at issue in *Husted v. A. Philip Randolph Institute*.<sup>52</sup>

With the federal government’s recent reticence to protect voters, and taking heed of the Constitution’s command that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof,”<sup>53</sup> voting rights scholars have argued that states and states constitutions should be utilized to protect voting rights.<sup>54</sup> Some states and localities, whether through the executive and legislature or by citizen-passed referenda, are leading the way towards protecting and expanding the franchise.

## A. Expanding the Voting Population

### 1. Lowering the Voting Age

In 2013, the city of Takoma Park, Maryland lowered to sixteen the voting age for city elections,<sup>55</sup> expanding the voter rolls by nearly 350 people as a result.<sup>56</sup> A year later, in the city’s 2014

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<sup>48</sup> *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

<sup>49</sup> Ari Berman, [Welcome to the First Presidential Election Since Voting Rights Act Guttled](#), ROLLING STONE (June 23, 2016, 3:40 PM).

<sup>50</sup> After the 2016 election, President Trump, without evidence, claimed that as many as five million votes were cast illegally for his opponent Hillary Clinton. In May 2017, President Trump created the Presidential Advisory Commission on Election Integrity to investigate this alleged voter fraud. Vice President Mike Pence and former Kansas Secretary of State Kris Kobach, who also has a long history of claiming widespread voter fraud without providing evidence, led the commission. To study “voter fraud” the commission sought to obtain from states a vast amount of voter data, including names, addresses, birthdates, and partial Social Security numbers. This request was met with bipartisan resistance from states, including Mississippi Secretary of State Delbert Hosemann, a Republican, who told the commission to “go jump in the Gulf of Mexico and Mississippi is a great State to launch from.” In addition to pushback from states, the commission faced a variety of lawsuits and by early 2018 President Trump had shut down the commission. Jessica Taylor, [Trump Dissolves Controversial Election Commission](#), NPR (Jan. 3, 2018, 8:06 PM).

<sup>51</sup> Samuel Bagenstos, [Sessions Changed DOJ’s Longstanding Position on Voter Purges in a Key SCOTUS Case](#), TAKE CARE (Sept. 26, 2017).

<sup>52</sup> *Id.*; *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (upholding by a 5-4 vote Ohio’s process for purging infrequent voters from voter rolls).

<sup>53</sup> U.S. CONST. art. I, § 4, cl. 1.

<sup>54</sup> Joshua A. Douglas, [To Protect the Right to Vote, Look to State Courts and State Constitutions](#), ACS ISSUE BRIEF (Aug. 2015).

<sup>55</sup> TAKOMA PARK, MD., MUN. CODE art. VI, § 601(a) (2016).

<sup>56</sup> Annys Shin, [Takoma Park 16-Year-Old Savors His History-Making Moment at the Polls](#), WASH. POST (Nov. 3, 2013).

election, 134 people aged sixteen to seventeen registered to vote, and about half of them voted—a voter turnout rate far higher than the ten percent rate among voters of other ages in the city.<sup>57</sup> Just a year later, Hyattsville, Maryland also lowered its voting age to sixteen for municipal elections.<sup>58</sup>

The Takoma Park and Hyattsville reforms have garnered national attention and—along with energized youth mobilization resulting from the horrific string of mass shootings, including the shooting at Marjory Stoneman Douglas High School in Parkland, Florida—have given birth to organizations like [Vote16USA](#).<sup>59</sup> More states and cities have followed their lead and proposed legislation that would lower the voting age in local elections.<sup>60</sup> Perhaps most exciting, a bill cleared committee on November 1, 2018, in Washington, D.C., that would lower the voting age for District residents to sixteen for all elections, including federal elections.<sup>61</sup> If the bill passes the full city council, D.C. would become the first jurisdiction in the country to successfully lower the voting age to sixteen for federal elections.<sup>62</sup>

## 2. Re-Enfranchisement of People with Felony Convictions

An estimated 6.1 million Americans are prohibited from “voting due to laws that disenfranchise citizens convicted of felony offenses.”<sup>63</sup> Currently, only Maine and Vermont do not place any restriction on the voting rights of people with felony convictions, including those people who are still in prison.<sup>64</sup> An additional fourteen states and the District of Columbia restore voting rights for people with felony convictions once they are released from prison.<sup>65</sup> At the start of 2018, twelve states “restrict[ed] voting rights even after a person has served his or her prison sentence and is no longer on probation or parole.”<sup>66</sup>

In 2018, voters in one of those twelve states, Florida, passed Amendment 4, ending lifetime disenfranchisement for most people with felony convictions.<sup>67</sup> The Sentencing Project estimates that nearly 1.5 million people with felony convictions could have their voting rights restored.<sup>68</sup> Prior to the passage of Amendment 4, Florida disenfranchised nearly ten percent of all its

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<sup>57</sup> Elena Schneider, [Students in Maryland Test Civic Participation and Win Right to Vote](#), N.Y. TIMES (Jan. 9, 2015).

<sup>58</sup> HYATTSVILLE, MD., CHARTER & CODE art. IV, § C4-1 (2015).

<sup>59</sup> Devyn Rafols-Nunez, [Push to Lower the Voting Age Gains Traction Across the States](#), NBC NEWS (June 24, 2018, 7:31 PM).

<sup>60</sup> *Id.*

<sup>61</sup> Nick Iannelli, [Bill Lowering DC Voting Age to 16 Passes Committee](#), WTOP (Nov. 1, 2018 10:20 AM).

<sup>62</sup> *Id.*

<sup>63</sup> Jean Chung, [Felony Disenfranchisement: A Primer](#), SENTENCING PROJECT (July 17, 2018).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> German Lopez, [Florida Votes to Restore Ex-Felon Voting Rights with Amendment 4](#), VOX (Nov. 7, 2018 1:15 PM).

<sup>68</sup> Gabby Deutch, [Florida Felons Want Their Voting Rights Restored](#), ATLANTIC (Sept. 13, 2018).

potential voters, including more than twenty-one percent of potential black voters. Moreover, accounted for nearly one quarter of those disenfranchised due to felony conviction nationally.<sup>69</sup>

## B. Expanding Access to Voting

In addition to expanding the electorate, it is important to make sure that everyone who has the right to vote can vote with relative ease. Though some reforms, such as making election day a national holiday, require action at the federal level, there are still plenty of actions states can take to help increase access to voting, including automatic voter registration and same day registration.

### 1. Automatic Voter Registration

Automatic voter registration (AVR) is as simple as the name implies. AVR makes voter registration an “opt-out” system instead of an “opt-in” system.<sup>70</sup> When an eligible voter interacts with a government agency, for instance by getting a driver’s license, they are automatically registered to vote unless they opt-out.<sup>71</sup>

Throughout the world, several developed democracies have AVR, including Sweden and Denmark where voter turnout exceeds eighty percent.<sup>72</sup> Currently, fifteen states and Washington, D.C. have AVR.<sup>73</sup> Combined, these jurisdictions include nearly one-third of all Americans.<sup>74</sup>

The early results for AVR are promising. In Vermont, during the first six months of 2017, when AVR was in place, 12,344 voter registrations were processed, compared to only 7,626 during the same period in the previous year, prior to AVR.<sup>75</sup> This is an especially promising result since 2016 was a presidential election year and interest in voter registration would likely be higher.<sup>76</sup>

### 2. Same Day Registration

Same day registration (SDR)—also known as election day registration (EDR)—is another effective way to expand people’s access to voting. As the name suggests, SDR allows residents of a state to register to vote and cast a ballot during early voting and/or on election day.<sup>77</sup> It can also allow voters who might otherwise be turned away or forced to cast provisional ballots—because their registrations were not processed correctly or there was an error in the system—to cast ballots. Currently, seventeen states and the District of Columbia allow some form of SDR.<sup>78</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> [Automatic Voter Registration](#), BRENNAN CTR. FOR JUSTICE (Nov. 7, 2018).

<sup>71</sup> *Id.*

<sup>72</sup> Madeline Marshall, [Why America Needs Automatic Voter Registration](#), VOX (Nov. 7, 2018 11:50 AM).

<sup>73</sup> BRENNAN CTR. FOR JUSTICE, *supra* note 70.

<sup>74</sup> *Id.*

<sup>75</sup> Brian Tashman, [Automatic Voter Registration is on the Rise](#), ACLU (Apr. 11, 2018 4:00 PM).

<sup>76</sup> *Id.*

<sup>77</sup> [Same Day Voter Registration](#), NAT’L CONFERENCE STATE LEGISLATURES (Nov. 20, 2018).

<sup>78</sup> *Id.*

Fifteen states and the District of Columbia have broad SDR systems and allow registration on election day, while North Carolina and Maryland only allow SDR for their early voting periods and not on election day itself.<sup>79</sup> In 2018, Maryland voters approved a constitutional amendment that would “authorize the state legislature to enact[] a process for election day registration.”<sup>80</sup> Like AVR, states with SDR have seen increased voter turnout. For instance, “[f]our of the top five states for voter turnout in the 2012 presidential election all offered Same-Day Registration” and “[a]verage voter turnout was over ten percentage points higher in SDR states than in other states.”<sup>81</sup> Similar to AVR, SDR provides another opportunity for states to lead the way on expanding access to voting.

### C. Discussion Questions

How can advocates use state constitutions to argue for greater protection of voting rights? How effective are other approaches states may take to protect and strengthen voting rights (e.g., early voting, rank choice voting, mail-in ballots)? What should be the process for re-enfranchisement of people with felony convictions (e.g., automatic upon release, automatic upon applications, at the discretion of a reviewing body)? What are the benefits and drawbacks of each of these approaches? Does the Twenty-Sixth Amendment bar states from lowering the voting age to sixteen for federal elections? What additional actions can states and localities take to make voting more accessible, fair, and secure?

### D. Resources

- Am. Civil Liberties Union, [Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and Other Democracies](#) (2006).
- Erwin Chemerinsky, [End Disenfranchisement of Felons](#), ORANGE CNTY. BAR ASSOC. (Oct. 2016).
- Joshua A. Douglas, [Expanding Voting Rights Through Local Law](#), ACS ISSUE BRIEF (Oct. 2017).
- Joshua A. Douglas, [To Protect the Right to Vote, Look to State Courts and State Constitutions](#), ACS ISSUE BRIEF (Aug. 2015).
- David H. Gans & Elizabeth B. Wydra, [The Voting Rights Act Is in Jeopardy, But It Shouldn't Be: A Close Look at Shelby County v. Holder](#), ACS ISSUE BRIEF (Feb. 2013).
- Mimi Marziani & Robert Landicho, [What Starts in Texas Doesn't Always Stay in Texas: Why Texas's Systematic Elimination of Grassroots Voter Registration Drives Could Spread](#), ACS ISSUE BRIEF (May 2018).
- Presidential Commission on Election Administration, [THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION](#) (2014).
- Jim Rutenberg, [A Dream Undone](#), N.Y. TIMES (July 29, 2015).
- Avner Shapiro, [A Pragmatic Approach to Challenging Felon Disenfranchisement Laws](#), ACS ISSUE BRIEF (Jan. 2017).

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> [What Is Same Day Registration? Where Is it Available?](#), DEMOS (last visited Nov. 21, 2018).

- William Yeomans et al., [The Voting Rights Amendment Act of 2014: A Constitutional Response to Shelby County](#), ACS ISSUE BRIEF (May 2014).
- Kathryn Zaia, [The Case for Lowering the Voting Age](#), N.Y. TIMES (June 6, 2018).

#### IV. Environmental Regulation

Environmental law in the United States is a mix of federal, state, tribal, and local laws and regulations. The Environmental Protection Agency (EPA) was established to oversee federal legislation and regulation to protect the environment;<sup>82</sup> however, several federal agencies—including the Departments of Justice, Energy, Transportation, and Customs and Border Protection—play integral enforcement roles. Some of the key federal statutes (and accompanying regulations) that these agencies implement include the Clean Air Act,<sup>83</sup> Clean Water Act,<sup>84</sup> Endangered Species Act,<sup>85</sup> National Environmental Policy Act of 1969,<sup>86</sup> and Toxic Substances Control Act.<sup>87</sup> The vast majority of federal regulations regarding the environment are found in Title 40 of the Code of Federal Regulations.<sup>88</sup>

Despite the importance and prominence of federal environmental law, state and local governments are responsible for enforcing most environmental laws.<sup>89</sup> In fact, many federal environmental laws employ cooperative federalism mechanisms where federal programs are enforced in coordination with states.<sup>90</sup> Despite criticism that it has abandoned cooperative federalism, the Trump administration EPA still touts the importance of the federal government “working collaboratively with states, local government, and tribes to implement laws that protect human health and the environment, rather than dictating one-size-fits-all mandates from Washington.”<sup>91</sup> One example of cooperative federalism is the Surface Mining Control and Reclamation Act (SMCRA) of 1977, which “establishes a federal framework that regulates mining activities in the absence of state regulations. A state may avoid the federal requirements entirely by establishing its own laws to substitute for SMCRA’s requirements.”<sup>92</sup> Similarly, the EPA issues federal regulations under the Resource Conservation and Recovery Act (RCRA), which govern solid and hazardous waste.<sup>93</sup> However, states can establish their own standards based on the RCRA’s requirements, and if the “EPA finds these state regulatory efforts to be

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<sup>82</sup> [Our Mission and What We Do](#), EPA, (last visited Nov. 28, 2018).

<sup>83</sup> 42 U.S.C. § 7401 *et seq.*

<sup>84</sup> 33 U.S.C. § 1251 *et seq.*

<sup>85</sup> 16 U.S.C. § 1531 *et seq.*

<sup>86</sup> 42 U.S.C. § 4321 *et seq.*

<sup>87</sup> 15 U.S.C. § 2601 *et seq.*

<sup>88</sup> 40 C.F.R. § 1.1 *et seq.* 50 C.F.R. § 1.1 *et seq.* also includes a number of environmental regulations.

<sup>89</sup> [Governance](#), ENV’T LAW INST. (last visited Nov. 28, 2018).

<sup>90</sup> *Id.*; see also [Cooperative Federalism: A Central Concept of Environmental Law](#), DOJ (July 27, 2016); [Cooperative Federalism at EPA](#), EPA, (last visited Nov. 28, 2018).

<sup>91</sup> EPA, *supra* note 90.

<sup>92</sup> ENV’T LAW INST., *supra* note 89.

<sup>93</sup> *Id.*

consistent with the federal requirements, then state agencies are given approval to implement and enforce RCRA and state agency action ‘has the same force and effect’ as EPA action.”<sup>94</sup> However, in some cases, the federal government has abandoned this collaborative approach, and states must step in.

### A. California Car Emissions

When Congress amended the Clean Air Act in 1970, it “empowered the EPA to set new national standards on air pollution from cars and factories.”<sup>95</sup> Because of California’s longstanding problems with smog, the state was concerned that the new federal legislation would inhibit its ability to aggressively fight car pollution.<sup>96</sup> California successfully lobbied for the legislation to include an explicit provision allowing the state, “[a]t any time, [to] ask the EPA administrator for a waiver to restrict tailpipe pollution more stringently than the federal government. If its proposed rules are ‘at least as protective of public health and welfare’ as the EPA’s, then the administrator must grant the waiver.”<sup>97</sup> The same section of the Clean Air Act also allows other states to adopt California’s more stringent standards.

The cooperative federalism approach enshrined in the Clean Air Act worked successfully for the legislation’s first thirty years but began to falter during the Bush administration. In 2002, California enacted Assembly Bill 1493 (AB 1493), requiring the California Air Resources Board (CARB) to “adopt the maximum feasible and cost-effective reductions in greenhouse gas emissions from light-duty vehicles.”<sup>98</sup> Two years later, CARB approved what are commonly referred to as the Pavley regulations.<sup>99</sup> The Pavley regulations “established increasingly stringent emission standards for the 2009 through 2016 model years, [and] were projected to have a seventeen percent overall reduction in climate change emissions from the light-duty fleet by 2020 and a twenty-five percent overall reduction by 2030.”<sup>100</sup> California and sixteen other states applied for a Clean Air Act waiver to implement the stricter air quality standards.<sup>101</sup> In response, the EPA, for the first time ever, denied California the waiver it requested to implement the Pavley regulations.<sup>102</sup> Prior to this waiver request, the federal government had

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<sup>94</sup> *Id.*

<sup>95</sup> Robinson Meyer, [The Coming Clean-Air War Between Trump and California](#), ATLANTIC (Mar. 6, 2017).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*; see 42 U.S.C. § 7543.

<sup>98</sup> STATE OF CALIFORNIA, AIR RESOURCES BOARD, [STAFF REPORT: PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE LOW-EMISSION VEHICLE III GREENHOUSE GAS EMISSION REGULATION](#) 5 (2018).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> John M. Broder & Felicity Barringer, [E.P.A. Says 17 States Can’t Set Emission Rules](#), N.Y. TIMES (Dec. 20, 2007).

<sup>102</sup> *Id.*

granted California more than fifty waivers.<sup>103</sup> After being denied this waiver, California sued the federal government.<sup>104</sup>

Ultimately, this case was never decided because in May 2009, while it was still pending, President Obama announced new national standards on greenhouse gas emissions from cars and granted California its waiver.<sup>105</sup> As of 2017, fifteen states had adopted California's more stringent emission standards.<sup>106</sup> As a result, roughly 135 million people—more than forty percent of the country's population—are covered by California's emissions rules.<sup>107</sup>

In August 2018, the Trump administration EPA announced a long-awaited proposal that would freeze the fuel-efficiency standards that the Obama administration put into place.<sup>108</sup> Included in this proposal is a provision to revoke California's waiver, despite the Clean Air Act's mandate that the federal government honor any such waiver.<sup>109</sup> This proposal could send the American auto market into disarray.<sup>110</sup> Automakers are worried that the move to change the emissions standards “may trigger years of legal battles and uncertainty.”<sup>111</sup>

In response to the EPA's proposed rollback, California “plans to change its rules to declare that the federal government's current, stricter auto-emission targets are the only ones that comply with state law—and not any future targets that are less strict.”<sup>112</sup> In late September, CARB “pass[ed] a series of measures that confirm its determination to reduce vehicle emissions in the state, and its willingness to lead the fight—no matter what the federal government says.”<sup>113</sup> Specifically, CARB affirmed that California's greenhouse gas vehicle regulation (which “establishes that cars meeting federal standards for model years 2017-2025 are ‘deemed to comply’ with California's standards”) covers “only vehicles that meet the standards originally

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<sup>103</sup> *Id.*

<sup>104</sup> Meyer, *supra* note 95.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> [The Safer Affordable Fuel Efficient \(SAFE\) Vehicles Proposed Rule for Model Years 2021-2026](#), EPA (last visited Nov. 29, 2018). The comment period for the EPA's proposed new fuel-efficiency rules closed on October 26, 2018. *Id.* See also, Coral Davenport, [Trump Administration Unveils Its Plan to Relax Car Pollution Rules](#), N.Y. TIMES (Aug. 2, 2018).

<sup>109</sup> Davenport, *supra* note 108.

<sup>110</sup> Hiroko Tabuchi, [California Strikes Back Against the Trump Administration's Auto Pollution Rollback](#), N.Y. TIMES (Aug. 7, 2018); see also Press Release, Governor Edmund G. Brown Jr. et al., [At Every Turn, We Will Defend Our Nation's Clean Car Emissions Standards](#) (Aug. 2, 2018); Press Release, Attorney General Xavier Becerra, [Trump Administration Should Welcome Not Silence Public's Comments on America's Clean Car Standards](#) (Aug. 27, 2018).

<sup>111</sup> Mark Chediak, [California and Carmakers 'in Agreement' on Emissions Standards](#), BLOOMBERG (June 6, 2018, 6:00 AM). The Alliance of Automobile Manufacturers even went as far as sending a letter to the White House's Office of Management and Budget urging the White House to cooperate with California officials regarding the emissions standards, noting that “climate change is real.” Ryan Beene, ['Climate Change is Real,' Carmakers Tell White House in Letter](#), BLOOMBERG (May 21, 2018, 10:41 PM).

<sup>112</sup> Tabuchi, *supra* note 110.

<sup>113</sup> Aarian Marshall, [California Says 'Nope' to the EPA's Car Emissions Rules](#), WIRED (Oct. 4, 2018).



agreed to by California, the federal government, and automakers in 2012—and not the weaker standards in the federal proposal.”<sup>114</sup> In November 2018, the EPA and CARB opened negotiations aimed at finding a compromise on emissions rules, in part to avoid a prolonged legal battle.<sup>115</sup> However, unless the EPA revises its proposed rules and allows California to continue to set its own standards, a legal battle seems inevitable.

Unless and until the Trump administration’s proposed rule becomes final and goes into effect, California’s stricter standards remain in place and are a good example of a “spillover” effect<sup>116</sup>—when states and cities adopt progressive laws and regulations whose benefits “spillover” to neighboring states and cities.<sup>117</sup> Because of California’s extremely large market for cars, auto manufacturers have enormous incentives to design and build cars to meet its standards. Other states have adopted California’s emissions standards to take advantage of these lower-emission, more fuel-efficient automobiles.<sup>118</sup> In fact, in November 2018, Colorado became the most recent state to adopt California’s higher emissions standards.<sup>119</sup>

## B. Discussion Questions

Beyond the Clean Air Act, what role do states play in implementing federal environmental laws, such as the Clean Water Act, the Endangered Species Act, and federal public land laws? Are waivers a sound strategy for states to safeguard their interests in protecting the environment and their citizens? Given the dire prediction of climate scientists, what collective measures could states take in the face of federal inaction to effectively address the global climate change crisis? Should companies, like automobile manufacturers, take a more active role in fighting climate change? What are other examples of “spillover” effects in the environmental context? As more states seek to address climate change through state regulation of carbon emissions by automobiles and power plants, how do these efforts relate to the national regime established by the Clean Air Act? Is there an argument that the Clean Air Act preempts these state laws?

## C. Resources

- Press Release, Attorney General Xavier Becerra, [Trump Administration Should Welcome Not Silence Public’s Comments on America’s Clean Car Standards](#) (Aug. 27, 2018).
- Press Release, Governor Edmund G. Brown Jr. et al., [At Every Turn, We Will Defend Our Nation’s Clean Car Emissions Standards](#) (Aug. 2, 2018).

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<sup>114</sup> Press Release, CARB, [Statement By CARB Chair on Action to Preserve California Vehicle Standards](#) (Sept. 28, 2018).

<sup>115</sup> David Shepardson, [White House, California to Discuss Vehicle Emissions Rules Next Week](#), REUTERS (Nov. 8, 2018, 4:55 PM).

<sup>116</sup> Gerken & Revesz, *supra* note 4.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> [Colorado Adopts California Emissions Standards](#), CBS Denver (Nov. 16, 2018 4:40 PM).

- Ann Carlson, [Federalism, Preemption, and Greenhouse Gas Emissions](#), 31 UCLA PUB. L. & LEGAL THEORY RES. PAPER SERIES 281 (2003).
- Ann Carlson, Meredith Hankins, & Julia Stein, *Shifting Gears: The Federal Government's Reversal on California's Clean Air Act Waiver*, ACS ISSUE BRIEF (forthcoming 2019).
- Daniel Farber, [Private: The Stealth Attack on the Environment](#), ACSBLOG (July 24, 2017).
- Robert Fischman, [Cooperative Federalism](#), 14 N.Y.U. ENVTL. L.J. 179 (2005).
- [No Turning Back](#), INST. FOR POLICY INTEGRITY (Oct. 2018).
- Erin Ryan, [Environmental Law After Sebelius: Will the Court's New Spending Power Limits Affect Environmental State-Federal Partnerships?](#), ACS ISSUE BRIEF (Oct. 2013).
- Erin Ryan, [Memo to Environmentalists: Brace for the Three Ps](#), ENVTL. LAW PROF BLOG (Nov. 15, 2018).
- David M. Uhlmann, [The Trump Administration's Orwellian SAFE Vehicles Rule](#), ACSBLOG (Oct. 30, 2018).

## V. Police Accountability

There is perhaps no better example of the dramatic impact that the 2016 election had on the federal government's posture towards criminal justice than the Department of Justice's about-face on police accountability. Though policing—and the administration and management of local police departments—is squarely within the purview of state and local governments, the federal government's intervention in cases of unconstitutional patterns and practices of policing has proven invaluable in prompting reform.

During the Obama administration, the DOJ frequently used its authority to investigate police departments accused of racially discriminatory and unconstitutional police practices.<sup>120</sup> Since 1994, when the statute giving the DOJ authority to conduct these investigations was enacted, about seventy law enforcement agencies have been subject to such investigations.<sup>121</sup> Of those, the DOJ has entered into consent decrees with about forty jurisdictions.<sup>122</sup> These consent decrees are court-approved settlements between the federal government and the jurisdictions that outline specific remediation measures the police departments must take to avoid the DOJ's filing suit in federal court. Required remediation measures often include policy changes and training to address: discriminatory policing practices and implicit bias; excessive use of force; unconstitutional stops, searches and arrests; police misconduct investigations and disciplinary

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<sup>120</sup> 42 U.S.C. § 14141 makes it unlawful for any police department to “engage in a pattern or practice of conduct . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,” and gives the U.S. attorney general authority to pursue “a civil action [to] obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.”

<sup>121</sup> CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, [THE CIVIL RIGHTS DIVISION'S PATTERN AND PRACTICE POLICE REFORM WORK: 1994-PRESENT](#) (2017).

<sup>122</sup> *Id.* at 44. See e.g., [Consent Decree](#), United States v. City of Ferguson, 4:16-cv-00180-CDP (E.D. Mo. Mar. 17, 2016); [Consent Decree](#), United States v. City of Baltimore, 1:17-cv-00099-JKB, (D. Md. Jan. 12, 2017).

measures; and community engagement.<sup>123</sup> A court-appointed monitor reports to the federal court overseeing the agreement the police department's progress implementing it. Normally, the consent decree remains in place until the federal court is satisfied the department has achieved and maintained full and effective compliance, which can take several years.<sup>124</sup>

Only months into his tenure, Attorney General Jeff Sessions issued a memorandum asserting that public safety demands that the DOJ not "impugn or undermine" police because of "the misdeeds of individual bad actors" and called on his staff to reevaluate all "existing or contemplated consent decrees" designed to address police misconduct and constitutional violations.<sup>125</sup> This signaled an end to the federal government's robust enforcement against unconstitutional patterns or practices of policing. Two years later, in one of his final acts as attorney general, Sessions issued an order that "drastically limited the ability of federal law enforcement officials to use court-enforced agreements to overhaul local police departments accused of abuses and civil rights violations,"<sup>126</sup> These new guidelines make it more difficult to enter and enforce a consent decrees by requiring: 1) the deputy attorney general or associate attorney general to approve the agreement; 2) department lawyers to provide evidence of additional violations *beyond* unconstitutional behavior; and 3) a sunset date for the agreement regardless of whether the municipality has implemented and maintained the remediation measures.<sup>127</sup>

In another blow to federal oversight of police accountability, Attorney General Sessions also rolled back the Collaborative Reform Initiative, a program within the Office of Community Oriented Policing Services (COPS Office) in which jurisdictions sought DOJ assistance to identify and resolve discriminatory or otherwise problematic policing practices.<sup>128</sup> This marks an unfortunate shift away from the federal government's working collaboratively with states and municipalities to ensure that police departments respect the constitutional and statutory rights of all citizens. Despite these changes and the lack of support from the federal government, many states continue efforts to increase police accountability with the aim of changing police behavior for the better.

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<sup>123</sup> CIVIL RIGHTS DIVISION, *supra* note 121.

<sup>124</sup> *Id.*

<sup>125</sup> [Memorandum from the Attorney General to Heads of Dep't Components and United States Attorneys](#) (Mar. 31, 2017).

<sup>126</sup> Katie Benner, [Session, in Last-Minute Act, Sharply Limits Use of Consent Decrees to Curb Police Abuses](#), N.Y. TIMES (Nov. 8, 2018).

<sup>127</sup> [Memorandum from the Attorney General to the Heads of Civil Litigating Components United States Attorneys](#) (Nov. 7, 2018).

<sup>128</sup> Press Release, DOJ, [Department of Justice Announces Changes to the Collaborative Reform Initiative](#) (Sept. 15, 2017); see also Carrie Johnson, [In His First Year as Attorney General, Sessions Transforms Justice in Key Ways](#), NPR (Feb. 9, 2018).

## A. Illinois

In 2017, the DOJ issued a report on its investigation of the Chicago Police Department following the 2015 shooting death of Laquan McDonald by a Chicago police officer.<sup>129</sup> The report concluded that Chicago police officers “engage in a pattern or practice of using force, including deadly force, that is unreasonable” and that the department “tolerated racially discriminatory conduct that not only undermines police legitimacy, but also contributes to the pattern of unreasonable force.”<sup>130</sup> While the next step would normally have been for the DOJ to seek a consent decree with Chicago to address these problems, in accordance with Attorney General Sessions’s 2017 memorandum, the DOJ demurred, because according to him, “It is not the responsibility of the federal government to manage non-federal law enforcement agencies.”<sup>131</sup>

In the absence of federal leadership, the Illinois Office of the Attorney General (OAG), relying on federal and state civil rights statutes, filed its own complaint against the City and its police department<sup>132</sup> and began its own process to negotiate a consent decree with them.<sup>133</sup> The agreement, which the parties submitted to a federal judge for approval in September 2018, covers numerous areas, including community policing, racial discrimination, crisis intervention, use of force, recruitment and promotions, supervision, and accountability and transparency.<sup>134</sup> The consent decree also provides for an independent monitor who will report to the court the City’s progress in implementing the agreement.<sup>135</sup> Though the court will review the agreement after five years to determine whether it should remain in place, it will only terminate if Chicago and the Chicago Police Department achieve “full and effective compliance” and maintain compliance for at least two years.<sup>136</sup>

Since its initial release in July 2018, both the Illinois OAG and the federal court have sought and received substantial public comments regarding the consent decree.<sup>137</sup> Among the more than 1,700 comments received is the DOJ’s statement opposing the consent decree. The DOJ contends that the consent decree untenably, “shifts control of [police department] policy and budgets—

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<sup>129</sup> UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION AND UNITED STATES ATTORNEY’S OFFICE, NORTHERN DISTRICT OF ILLINOIS, [INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT](#) (2017).

<sup>130</sup> *Id.* at 5, 15.

<sup>131</sup> [Memorandum from the Attorney General to the Heads of Department Components and United States Attorneys](#) (Mar. 31, 2017).

<sup>132</sup> [Proposed Consent Decree](#), Illinois v. City of Chicago, No. 17-cv-6260 (N.D. Ill. Sept. 13, 2018). The OAG filed the complaint “pursuant to 42 U.S.C. § 1983; the U.S. Constitution; the Illinois Constitution; the Illinois Civil Rights Act of 2003, 740 ILCS 23/5; and the Illinois Human Rights Act, 775 ILCS 5/5-102(C).” *Id.*

<sup>133</sup> Julian Crews, [Chicago Police Consent Decree for Reform Finalized](#), WGN (Sept. 13, 2018).

<sup>134</sup> [Proposed Consent Decree](#), Illinois v. City of Chicago, No. 17-cv-6260 (N.D. Ill. Sept. 13, 2018).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 214-15.

<sup>137</sup> [Chicago Police Consent Decree](#), ILLINOIS ATTORNEY GENERAL, (last visited Dec. 4, 2018).

for the indefinite future—from local, politically accountable officials to a federal court.”<sup>138</sup> The DOJ claims to believe that “[t]here may be times when ongoing federal court oversight is necessary to ensure that a recalcitrant local government agency comes into compliance with federal law.”<sup>139</sup> But in its estimation, merely three years after the Department and City sought to cover-up the murder of unarmed seventeen-year-old Laquan McDonald, and amid evidence of systemic corruption, now “is not such a time.”<sup>140</sup> Seemingly unsatisfied with its own refusal to hold the Chicago Police Department accountable for a litany of abuses and constitutional violations, the DOJ seeks to frustrate local elected officials’ efforts to do so. It remains to be seen how persuasive this statement from the DOJ will be.

## B. California

In October 2016, after a year studying the San Francisco Police Department (SFPD) at the request of the City’s mayor, the DOJ’s COPS Office released a report assessing and recommending reform in areas including officer use-of-force, racial bias, community policing, accountability, recruitment, hiring, and personnel practices.<sup>141</sup> Within one year, implementation of the reforms resulted in an eighteen percent decrease in use of force and a nearly ten percent decrease in complaints against officers.<sup>142</sup> Despite this success, in 2017, the Trump administration DOJ announced dramatic changes to the Collaborative Reform Initiative, the voluntary program under which the study was conducted, which rescinded COPS’s authority to provide “resources [and] guidance to help departments improve police-community relations,” and abandoned its “review of the SFPD’s implementation of the proposed reforms”<sup>143</sup> and similar reviews in other jurisdictions throughout the country.

A short time later, utilizing a provision of California law similar to the federal statute that empowers the DOJ to investigate police departments for patterns and practices of unconstitutional or illegal conduct,<sup>144</sup> California Attorney General Xavier Becerra announced that the California Department of Justice had entered into an agreement with the city of San Francisco and SFPD “to evaluate and publicly report on the police department’s

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<sup>138</sup> [Statement of Interest Opposing Consent Decree](#), Illinois v. City of Chicago, No. 17-cv-6260 (N.D. Ill. 2018). See also Dan Hinkel, [U.S. Attorney General Says Chicago Police Consent Decree Should Be Tossed, While Activists Seek Tighter Rules](#), CHI. TRIB. (Oct. 12, 2018).

<sup>139</sup> [Statement of Interest Opposing Consent Decree](#), Illinois v. City of Chicago, No. 17-cv-6260 (N.D. Ill. 2018).

<sup>140</sup> *Id.*

<sup>141</sup> Press Release, Attorney General Xavier Becerra, [Attorney General Becerra Takes on Independent Review of San Francisco Police Reforms](#) (Feb. 5, 2018); COMMUNITY ORIENTED POLICING SERVICES, DOJ, [COLLABORATIVE REFORM INITIATIVE AN ASSESSMENT OF THE SAN FRANCISCO POLICE DEPARTMENT](#) (2016).

<sup>142</sup> COMMUNITY ORIENTED POLICING SERVICES, *supra* note 141.

<sup>143</sup> *Id.*

<sup>144</sup> CAL. CIV. CODE § 52.3 provides that “Attorney General may bring a civil action . . . to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice of conduct” that violate Constitution or laws of the United States or by the Constitution or laws of California; see 42 U.S.C. § 14141

implementation of reforms previously recommended by the U.S. Department of Justice.”<sup>145</sup> This new agreement implemented all 272 recommendations from the original DOJ report.<sup>146</sup>

### C. Engaging More States in Police Accountability Reform

With the U.S. DOJ now ceding its leadership in police accountability, state attorneys general with authority similar to California’s can step in to help fill the void – though resource constraints are a greater concern for states, especially smaller states, than for the federal governments.

Those states without such authority can, of course, seek to enact legislation granting their OAG’s authority to investigate and sue police departments for abuses. In the absence of such legislative action, states can pursue suits similar to the Illinois OAG, under federal and state civil rights statutes. Though such suits would provide the opportunity for discovery that could uncover some police misconduct, they would not allow for more robust, DOJ-style pattern and practice investigations.

State governors may also consider executive action. In 2015, New York Governor Andrew Cuomo signed Executive Order 147, which named the state attorney general as a special prosecutor for investigating police-related civilian deaths.<sup>147</sup> The Special Investigations and Prosecution Unit (SIPU) within the New York OAG “investigate[s] and, if warranted, prosecute[s] all cases that fall within the scope of Executive Order 147.”<sup>148</sup> As of May 2018, SIPU has charged one police officer and one district attorney, is investigating seven incidents, and has closed nine investigations.<sup>149</sup> In addition to the investigations, SIPU issues a biennial report outlining its investigations and making recommendations for police accountability, including policies regarding Taser use on individuals suspected of being under the influence of drugs and outfitting officers with body-worn cameras.<sup>150</sup> Though Executive Order 147 is limited in scope to officer-related deaths and not all incidents of excessive use of force, and is focused on individual officers rather than more systemic policing problems, it serves as an important tool for focusing prosecutorial attention on police misconduct.

### D. Discussion Questions

How does the federal government’s current position toward consent decrees affect existing, court-approved consent decrees? What can states and localities do to ensure that existing consent decrees remain effective at holding police departments accountable? What are the

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<sup>145</sup> Press Release, Attorney General Xavier Becerra, [Attorney General Becerra Takes on Independent Review of San Francisco Police Reforms](#) (Feb. 5, 2018).

<sup>146</sup> [Memorandum of Understanding Between the California Department of Justice and the City and County of San Francisco, Acting Through the Mayor’s Office and San Francisco Police Department](#) (Feb. 5, 2018).

<sup>147</sup> [N.Y. Exec. Order No. 147](#) (2015).

<sup>148</sup> [Special Investigation and Prosecutions Unit](#), N.Y. STATE OFFICE ATTORNEY GENERAL (last visited Dec. 4, 2018).

<sup>149</sup> *Id.*

<sup>150</sup> OFFICE OF NEW YORK STATE ATTORNEY GENERAL, [BIENNIAL REPORT OF THE OFFICE OF THE ATTORNEY GENERAL’S SPECIAL INVESTIGATIONS & PROSECUTIONS UNIT](#) 13, 16 (2017).

benefits and disadvantages of states utilizing federal and state civil right statutes to hold police departments accountable? How might pattern and practice statutes be more effective? What drawbacks might they have?

### E. Resources

- Catherine Vanchiere Beane, [\*America at a Crossroads: Charting a New Course Towards an Integrative Justice Paradigm\*](#), ACS ISSUE BRIEF (Oct. 2015).
- Marc Jonathan Blitz, [\*Police Body-Worn Cameras: Evidentiary Benefits and Privacy Threats\*](#), ACS ISSUE BRIEF (May 2015).
- Kami N. Chavis, & Conor Degan, [\*Curbing Excessive Force: A Primer on Barriers to Police Accountability\*](#), ACS ISSUE BRIEF (Apr. 2017).
- James M. Doyle, [\*From Error Toward Quality: A Federal Role in Support of Criminal Process\*](#), ACS ISSUE BRIEF (July 2010).
- [\*Police Accountability\*](#), MARSHALL PROJECT (last updated Dec. 4, 2018, 11:39 AM).
- Connor Maxwell & Danyelle Solomon, [\*Expanding the Authority of State Attorneys General to Combat Police Misconduct\*](#), CENTER FOR AM. PROGRESS (Dec. 12, 2018, 9:02 AM).

## Speakers List

The following list includes a variety of scholars, advocates, and litigators you may contact when planning your chapter's progressive federalism events this year. The speakers are listed in alphabetical order, according to their location. We have provided their title, organization, and the broad legal issues related to the rule of law into which their research, litigation, or advocacy falls. Please note that these categories are necessarily simplistic. When considering any of the experts listed below for your programming, we encourage you to research the speaker to ensure their specific specialties would be appropriate for your event.

The potential speakers included in this guide are not an exhaustive list of all possible experts you might consider as you plan your 2019 programming. Instead, this list is intended to provide you with a sampling of the scholars, advocates, institutions, and organizations that work on these issues. When developing your events, we also encourage you to consider local experts and practitioners and to consult law school faculty members, including ACS student chapter faculty advisors, for further suggestions.

Name	Title	Organization	State	Specialty
<b>Angela Banks</b>	Charles J. Merriam Distinguished Professor of Law	Arizona State University Sandra Day O'Connor College of Law	AZ	Immigration
<b>Daniel Bodansky</b>	Regents' Professor	Arizona State University Sandra Day O'Connor College of Law	AZ	International Environmental
<b>Kirsten H. Engel</b>	Charles E. Ares Professor of Law	The University of Arizona James E. Rogers College of Law	AZ	Environment
<b>Terry Goddard</b>	Former Arizona Attorney General	Arizona State University Sandra Day O'Connor College of Law	AZ	Federalism: The Law of State Attorneys General
<b>Toni Massaro</b>	Regents' Professor	The University of Arizona James E. Rogers College of Law	AZ	Constitutional Law & Immigration
<b>Troy Rule</b>	Professor of Law	Arizona State University Sandra Day O'Connor College of Law	AZ	Environment



Name	Title	Organization	State	Specialty
Joshua Sellers	Associate Professor of Law	Arizona State University Sandra Day O'Connor College of Law	AZ	Voting Rights
Bijal Shah	Associate Professor of Law	Arizona State University Sandra Day O'Connor College of Law	AZ	Immigration
Devon Carbado	Associate Vice Chancellor of BruinX for Equity, Diversity and Inclusion	UCLA School of Law	CA	Police Accountability
Ann E. Carlson	Shirley Shapiro Professor of Environmental Law	UCLA School of Law	CA	Environment
Jennifer M. Chacón	Professor of Law	UCLA School of Law	CA	Immigration
Erwin Chemerinsky	Dean	University of California Berkeley Law	CA	Constitutional Law
Jack Chin	Edward L. Barrett Jr. Chair of Law	University of California Davis School of Law	CA	Immigration
Paul Cort	Staff Attorney	Earthjustice	CA	Environment
Timothy Duane	Professor in Residence	University of San Diego School of Law	CA	Environment
Veronica Eady	Assistant Executive Officer for Environmental Justice	California Air Resources Board	CA	Environment
Christopher S. Elmendorf	Martin Luther King, Jr. Professor of Law	University of California Davis School of Law	CA	Voting Rights
Daniel Farber	Faculty Director, Center for Law, Energy, & the Environment	University of California Berkeley School of Law	CA	Environment

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>Pratheepan Gulasekaram</b>	Professor of Law	Santa Clara University School of Law	CA	Immigration & Federalism
<b>Irene Gutierrez</b>	Attorney, Climate & Clean Energy Program	Natural Resources Defense Council	CA	Environment
<b>Richard L. Hasen</b>	Chancellor's Professor of Law and Political Science	University of California Irvine School of Law	CA	Voting Rights
<b>Elizabeth Joh</b>	Professor of Law	University of California Davis School of Law	CA	Police Accountability
<b>Pamela S. Karlan</b>	Kenneth and Harle Montgomery Professor of Public Interest Law	Stanford Law School	CA	Voting Rights
<b>Stephen Lee</b>	Professor of Law	University of California Irvine School of Law	CA	Immigration
<b>Justin Levitt</b>	Associate Dean for Research; former Deputy Assistant Attorney General, DOJ Civil Rights Division	Loyola Law School Los Angeles	CA	Voting Rights
<b>Eric Miller</b>	Professor of Law	Loyola Law School Los Angeles	CA	Police Accountability
<b>Kathleen S. Morris</b>	Professor of Law	Golden Gate University School of Law	CA	Federalism & Localism
<b>Hiroshi Motomura</b>	Susan Westerberg Prager Distinguished Professor of Law	UCLA School of Law	CA	Immigration
<b>David Pettit</b>	Senior Attorney, Climate & Clean Energy Program	Natural Resources Defense Council	CA	Environment

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>L. Song Richardson</b>	Dean and Chancellor's Professor	University of California Irvine School of Law	CA	Police Accountability
<b>Bertrall Ross</b>	Chancellor's Professor of Law	University of California Berkeley School of Law	CA	Voting Rights
<b>Leticia Saucedo</b>	Professor of Law	University of California Davis School of Law	CA	Immigration
<b>Franita Tolson</b>	Professor of Law	University of Southern California Gould School of Law	CA	Voting Rights
<b>Violeta Chapin</b>	Associate Clinical Professor of Law	University of Colorado Law	CO	Immigration
<b>Ming Hsu Chen</b>	Associate Professor of Law	University of Colorado Law	CO	Immigration
<b>Justin Pidot</b>	Professor of Law	University of Denver Sturm College of Law	CO	Environment
<b>Nicholas E. Mitchell</b>	Independent Monitor	The Office of the Independent Monitor	CO	Police Accountability
<b>Muneer I. Ahmad</b>	Deputy Dean for Experiential Education	Yale Law School	CT	Immigration
<b>Tracey Mearns</b>	Walton Hale Hamilton Professor of Law	Yale Law School	CT	Police Accountability
<b>Cristina Rodriguez</b>	Leighton Homer Surbeck Professor of Law	Yale Law School	CT	Immigration
<b>Michael J. Wishnie</b>	William O. Douglas Clinical Professor of Law	Yale Law School	CT	Immigration
<b>Paul Butler</b>	The Albert Brick Professor in Law	Georgetown University Law Center	DC	Police Accountability

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>Amanda Frost</b>	Professor of Law	American University Washington College of Law	DC	Immigration
<b>Justin Hansford</b>	Associate Professor of Law	Howard University School of Law	DC	Police Accountability
<b>Simon Lazarus</b>	Former White House Domestic Policy Staffer	Carter Administration	DC	Federalism
<b>Jayesh Rathod</b>	Professor of Law	American University Washington College of Law	DC	Immigration
<b>Martha Roberts</b>	Senior Attorney	Environmental Defense Fund	DC	Environment
<b>Jason Rylander</b>	Senior Staff Attorney	Defenders of Wildlife	DC	Environment
<b>Nancy Abudu</b>	Deputy Legal Director	Southern Poverty Law Center, Voting Rights Practice Group	FL/GA	Voting Rights
<b>Caroline Bettinger-Lopez</b>	Professor of Clinical Legal Education	University of Miami School of Law	FL	Police Accountability & Immigration
<b>Richard Grosso</b>	Professor of Law	NOVA Southeastern University Shepard Broad College of Law	FL	Environment
<b>Elizabeth M. Iglesias</b>	Professor of Law	University of Miami School of Law	FL	Police Accountability & Voting Rights
<b>Shani M. King</b>	Director, Center on Children and Families	University of Florida Levin College of Law	FL	Immigration
<b>Tamara F. Lawson</b>	Dean	St. Thomas University School of Law	FL	Police Accountability
<b>Michael McDonald</b>	Associate Professor	University of Florida	FL	Voting Rights

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>Erin Ryan</b>	Elizabeth C. & Clyde W. Atkinson Professor	Florida State University College of Law	FL	Environment
<b>Amy L. Stein</b>	Professor of Law	University of Florida Levin College of Law	FL	Environment
<b>Hannah Wiseman</b>	Attorneys' Title Professor	Florida State University College of Law	FL	Environment
<b>Russell Gabriel</b>	Criminal Defense Practicum Director	University of Georgia School of Law	GA	Police Accountability
<b>Laughlin McDonald</b>	Voting Rights Project	ACLU	GA	Voting Rights
<b>Natsu Taylor Saito</b>	Distinguished University Professor	Georgia State University College of Law	GA	Immigration
<b>Robert A. Schapiro</b>	Asa Griggs Candler Professor of Law	Emory University School of Law	GA	Federalism
<b>Stella Burch Elias</b>	Professor of Law	The University of Iowa College of Law	IA	Immigration
<b>Ann Naffier</b>	Legal Director	Iowa Justice For Our Neighbors	IA	Immigration
<b>Kate Evans</b>	Associate Professor Law	University of Idaho College of Law	ID	Immigration
<b>Stephen R. Miller</b>	Associate Dean for Faculty Development	University of Idaho College of Law	ID	Environment
<b>Erin Delaney</b>	Associate Dean of Faculty and Research	Northwestern Pritzker School of Law	IL	Immigration
<b>Craig Futterman</b>	Clinical Professor of Law	The University of Chicago Law School	IL	Police Accountability
<b>Colleen Kilbride</b>	Staff Attorney	National Immigrant Justice Center	IL	Immigration
<b>Nancy C. Loeb</b>	Director, Environmental Advocacy Center	Northwestern Pritzker School of Law	IL	Environment

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>Amy Martin</b>	Immigration Law Clinical Fellow	Northwestern Pritzker School of Law, Bluhm Legal Clinic	IL	Immigration
<b>Raia Stoicheva</b>	Staff Attorney	The Young Center	IL	Immigration
<b>Robert L. Fischman</b>	George P. Smith, II Distinguished Professor of Law	Indiana University Bloomington Maurer School of Law	IN	Environment
<b>Luis Fuentes-Rohwer</b>	Professor of Law	Indiana University Bloomington Maurer School of Law	IN	Voting Rights
<b>Rudy Monterrosa</b>	Adjunct Professor	The Law School at University of Notre Dame	IN	Immigration
<b>Carlton Mark Waterhouse</b>	Director, Environmental, Energy and Natural Resources Law Program	Indiana University Robert H. McKinney School of Law	IN	Environment
<b>Joshua A. Douglas</b>	Thomas P. Lewis Professor of Law	University of Kentucky College of Law	KY	Voting Rights
<b>Darlene C. Goring</b>	Sam D'Amico Endowed Professor of Law	LSU Law	LA	Immigration
<b>William P. Quigley</b>	Professor of Law	Loyola University New Orleans College of Law	LA	Voting Rights
<b>Guy-Uriel Charles</b>	Bennett Boskey Visiting Professor of Law	Harvard Law School	MA	Voting Rights
<b>Sharmila Murthy</b>	Associate Professor of Law	Suffolk University Law School	MA	Environment
<b>Gilda R. Daniels</b>	Associate Professor of Law	University of Baltimore School of Law	MD	Voting Rights

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>James C. Hathaway</b>	Director, Program in Refugee and Asylum Law	University of Michigan Law School	MI	International Refugee Law
<b>Mae Kuykendall</b>	Professor of Law	Michigan State University College of Law	MI	Federalism
<b>David M. Uhlmann</b>	Director, Environmental Law and Policy Program	University of Michigan Law School	MI	Environment
<b>Elizabeth Hubertz</b>	Assistant Director, Interdisciplinary Environmental Clinic	Washington University in St. Louis School of Law	MO	Environment
<b>Anthony Johnstone</b>	Professor of Law	University of Montana Alexander Blewett III School of Law	MT	Voting Rights & Federalism
<b>Kami Chavis</b>	Associate Provost for Academic Initiatives	Wake Forest University School of Law	NC	Police Accountability
<b>Catherine Y. Kim</b>	George R. Ward Distinguished Term and Associate Professor of Law	University of North Carolina School of Law	NC/NY	Immigration: Separation of Powers
<b>Samuel Walker</b>	Emeritus Professor	University of Nebraska at Omaha	NE	Police Accountability
<b>Rose Cuison Villazor</b>	Professor of Law	Rutgers Law School	NJ	Immigration
<b>Rachel Barkow</b>	Vice Dean	NYU School of Law	NY	Police Accountability
<b>I. Bennett Capers</b>	Stanley A. August Professor of Law	Brooklyn Law School	NY	Police Accountability

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>Richard Briffault</b>	Joseph P. Chamberlain Professor of Legislation	Columbia Law School	NY	State & Local Government Law & Voting Rights
<b>Michael Burger</b>	Executive Director, Sabin Center for Climate Change Law	Columbia Law School	NY	Environment
<b>Adam B. Cox</b>	Robert A. Kindler Professor of Law	NYU Law	NY	Immigration
<b>Nestor Davidson</b>	Faculty Director, Urban Law Center	Fordham University School of Law	NY	State & Local Government Law
<b>Jeffrey Fagan</b>	Isidor and Seville Sulzbacher Professor of Law	Columbia Law School	NY	Police Accountability
<b>Barry Friedman</b>	Jacob D. Fuchsberg Professor of Law	NYU School of Law	NY	Police Accountability
<b>Michael Gerrard</b>	Professor and Director, Sabin Center for Climate Change Law	Columbia Law School	NY	Environment
<b>Jamal Greene</b>	Dwight Professor of Law	Columbia Law School	NY	Voting Rights
<b>Olatunde Johnson</b>	Jerome B. Sherman Professor of Law	Columbia Law School	NY	Civil Rights & Localism
<b>Kate Levine</b>	Assistant Professor of Law	St. John's University School of Law	NY	Police Accountability
<b>Rick T. Su</b>	Professor	University at Buffalo School of Law	NY	Immigration, Local Government Law & Federalism
<b>Gerald Torres</b>	Jane M.G. Foster Professor of Law	Cornell Law School	NY	Environment



Name	Title	Organization	State	Specialty
Ekow N. Yankah	Professor of Law	Yeshiva University Benjamin N. Cardozo School of Law	NY	Police Accountability
Peter Zimroth	Director of the Center on Civil Justice	NYU School of Law	NY	Police Accountability
Scott Greenwood	Civil Rights Attorney	Private Practice	OH	Police Accountability
Daniel P. Tokaji	The Charles W. Ebersold and Florence Whitcomb Ebersold Professor of Constitutional Law	The Ohio State University Mortiz College of Law	OH	Voting Rights
Jay Austin	Senior Attorney	Environmental Law Institute	OR	Environment
Gilbert Paul Carrasco	Professor of Law	Willamette University College of Law	OR	Immigration
Paul Diller	Director of the Certificate Program in Law & Government	Willamette University College of Law	OR	Federalism
William Funk	Lewis & Clark Distinguished Professor of Law Emeritus	Lewis & Clark Law School (May - Dec.)	OR/CA	Environment
Juliet Stumpf	Robert E. Jones Professor of Advocacy and Ethics	Lewis & Clark Law School	OR	Immigration
Jill E. Family	Commonwealth Professor of Law and Government	Widener University Commonwealth Law School	PA	Immigration
Anil Kalhan	Professor of Law	Drexel University Thomas R. Kline School of Law	PA/NY	Immigration
Shoba Wadhia	Director, Center for Immigrants' Rights Clinic	Penn State Law	PA	Immigration

<b>Name</b>	<b>Title</b>	<b>Organization</b>	<b>State</b>	<b>Specialty</b>
<b>Seth Stoughton</b>	Associate Professor of Law	University of South Carolina School of Law	SC	Police Accountability
<b>Travis Brandon</b>	Assistant Professor of Law	Belmont University College of Law	TN	Environment
<b>Karla McKanders</b>	Clinical Professor of Law	Vanderbilt University Law School	TN	Immigration & Refugee Law
<b>Chandler Davidson</b>	Research Professor	Rice University	TX	Voting Rights
<b>Barbara Hines</b>	Adjunct Professor	University of Texas at Austin School of Law	TX	Immigration
<b>Jennifer E. Laurin</b>	The Wright C. Morrow Professor	University of Texas at Austin School of Law	TX	Police Accountability
<b>Thomas O McGarity</b>	Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law	University of Texas at Austin School of Law	TX	Environment
<b>Nina Perales</b>	Vice President of Litigation	Mexican American Legal Defense and Educational Fund	TX	Voting Rights & Immigration Civil Rights
<b>D. Theodore Rave</b>	George A. Butler Research Professor	The University of Houston Law Center	TX	Voting Rights
<b>SpearIt</b>	Professor of Law	Texas Southern University Thurgood Marshall School of Law	TX	Police Accountability
<b>Michael Gilbert</b>	Professor of Law	University of Virginia School of Law	VA	Voting Rights
<b>Rachel Harmon</b>	F.D.G. Ribble Professor of Law	University of Virginia School of Law	VA	Police Accountability
<b>Richard Schragger</b>	Perre Bowen Professor of Law	University of Virginia School of Law	VA	Federalism

Name	Title	Organization	State	Specialty
Mario Barnes	Toni Rembe Dean	University of Washington School of Law	WA	Police Accountability
Alejandra Gonza	Director, International Human Rights Clinic	University of Washington School of Law	WA	International Human Rights Law
Kevin J. Hamilton	Partner	Perkins Coie	WA	Voting Rights
Atiba Ellis	Professor of Law	Marquette University Law School	WI	Voting Rights
Robert Yablon	Assistant Professor	University of Wisconsin Law School	WI	Voting Rights

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