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SYMPOSIUM INTRODUCTION

PROMOTING RATIONALITY AT THE  
INSTITUTE FOR POLICY INTEGRITY

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INTRODUCTION

While serving on an EPA advisory panel in the 1990s, I witnessed a deep imbalance in how stakeholders engaged on the economic issues related to environmental policy. Our panel was tasked with reforming the agency’s methods of economic analysis, and industry groups routinely sent talented lawyers and economists to our meetings to push their views. Meanwhile, environmental advocacy groups were largely absent, unwilling or unable to use economics to make their case.

Some years later, Michael Livermore and I highlighted this dynamic in a book, *Retaking Rationality: How Cost-Benefit Analysis Can Better Protect the Environment and Our Health*.<sup>1</sup> We argued that economic analysis can be an advocate’s most powerful tool, since a balanced look at the numbers often supports strong

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<sup>1</sup> See RICHARD L. REVESZ & MICHAEL A. LIVERMORE, *RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH* 32–33 (2008).

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government protections. In 2008, we founded the Institute for Policy Integrity at New York University School of Law (Policy Integrity) to amplify this message. We had four overarching goals for Policy Integrity: to publish scholarship on critical policy issues; to improve government decisionmaking through advocacy; to build the capacity of other organizations to make economic arguments in policy proceedings; and to train and educate future scholars and policy practitioners.

Our first decade of work has led to notable successes in each of these areas. Policy Integrity staff members have published an array of influential articles, books, and reports. Our advocacy efforts, which often build on this scholarship, have influenced policy at the federal, state, and local levels. Our partnerships and capacity building have helped numerous groups, from the Sierra Club to Planned Parenthood, to incorporate economic analysis into their advocacy. And our fellowship program and Regulatory Policy clinic have honed the skills of talented lawyers and economists who have gone on to prominent positions in government, academia, and policy advocacy. We have grown considerably to a full-time staff of nineteen, and Policy Integrity has played a role in making many critical policy debates more rational.

## I. SCHOLARSHIP THAT INFORMS ADVOCACY

Staff members at Policy Integrity have published an impressive breadth of scholarship, much of which is aimed at better quantifying the benefits of environmental policies and using this information rationally. This research can help policymakers to better internalize externalities and improve policy design. We have used our scholarship as the basis for robust advocacy efforts in several important areas.

### A. *Quantifying Climate Damages*

Our research on the social cost of carbon (SCC) has helped make the benefits of climate change policies more tangible. This metric, which quantifies the economic damage from each additional ton of carbon dioxide emitted, is the best existing tool for assessing climate policies. We have published several important articles and reports on why the value determined by the Interagency Working Group during the Obama administration is the best current estimate of the SCC and on how this estimation can be improved in the

future, for example by accounting for currently omitted damage categories. Our publications on the SCC have appeared in leading academic journals such as *Nature*<sup>2</sup> and *Science*.<sup>3</sup> Two of these pieces were co-authored with Nobel Prize-winner Kenneth Arrow.<sup>4</sup> We also provided input to the National Academies of Sciences to help with its 2016 review of the SCC calculations.<sup>5</sup>

Our work related to the SCC demonstrates how our advocacy efforts typically build on our scholarship. For several years, we have led a coalition of environmental groups in submitting public comments on all federal regulations that affect greenhouse gas emissions, using arguments from our scholarship to encourage proper use of the SCC. The coalition typically includes the Environmental Defense Fund, the Natural Resources Defense Council, the Sierra Club, the Union of Concerned Scientists, and several other groups. Our work to assemble and lead this coalition has ensured that many of the most influential environmental groups in the country are speaking with a unified voice and using sophisticated economic arguments in all federal proceedings on greenhouse gas regulation—a sign of the immense progress that has been made in recent years. Our work with this coalition has also helped build the capacity of these organizations to make similar economic arguments in other policy contexts.

Policy Integrity also has played a key role in litigation related to the SCC. A series of recent court rulings have made clear that federal agencies must account for greenhouse gas impacts in their decisionmaking, and our briefs and analyses have helped support these landmark decisions. In a major 2016 decision, *Zero Zone, Inc. v. United States Department of Energy*,<sup>6</sup> the U.S. Court of Appeals for the Seventh Circuit sided with the Department of Energy in a

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<sup>2</sup> See Richard L. Revesz et al., Comment, *Improve Economic Models of Climate Change*, 508 NATURE 173 (2014).

<sup>3</sup> See Richard L. Revesz et al., Letter, *Best Cost Estimate of Greenhouse Gases*, 357 SCIENCE 655 (2017).

<sup>4</sup> See Richard L. Revesz et al., Letter to the Editor, *The Social Cost of Carbon: A Global Imperative*, 11 REV. ENVTL. ECON. & POL'Y 1, 172–73 (2017); Revesz et al., *supra* note 2.

<sup>5</sup> See INST. FOR POLICY INTEGRITY, RECOMMENDATIONS TO NATIONAL ACADEMIES OF SCIENCES ON CHANGES TO THE FINAL PHASE 1 REPORT ON THE SOCIAL COST OF CARBON AND RECOMMENDATIONS IN ANTICIPATION OF THE PHASE 2 REPORT ON THE SOCIAL COST OF CARBON (2016), [https://policyintegrity.org/documents/Comments\\_to\\_NAS\\_on\\_SCC.pdf](https://policyintegrity.org/documents/Comments_to_NAS_on_SCC.pdf).

<sup>6</sup> *Zero Zone, Inc. v. U.S. Dep't. of Energy*, 832 F.3d 654 (7th Cir. 2016).

challenge to the agency's energy efficiency standards for commercial refrigerators, and the judges upheld the agency's use of the SCC in its analysis of the regulation. The court, which was the first to rule on the SCC's legality, acknowledged our brief,<sup>7</sup> which was the only one to discuss the SCC in a sustained manner. The judges adopted reasoning consistent with many of our brief's arguments about the SCC, while rejecting a host of arguments on the other side.<sup>8</sup> The case garnered considerable media attention, and Cass Sunstein, former head of the Office of Information and Regulatory Affairs, called the decision "one of the most important climate change rulings ever."<sup>9</sup>

In 2017, a decision by the U.S. Court of Appeals for the Tenth Circuit, relying on arguments from our brief, further established case law on the importance of thorough greenhouse gas emissions analysis. The court unanimously ruled that the Bureau of Land Management violated the National Environmental Policy Act by providing an inadequate analysis of the likely climate impacts from four large coal leases.<sup>10</sup> It found that the agency's review was "irrational" because it relied on the flawed notion of perfect substitution, assuming that fewer coal leases on public land would merely lead to an equal amount of additional coal mining elsewhere.<sup>11</sup> Policy Integrity's brief focused in part on why this notion runs counter to basic economic principles.<sup>12</sup>

Building on these successes, we have pushed for appropriate analysis of greenhouse gas emissions impacts in many relevant natural resources contexts, including federal leasing of coal, oil, and gas rights, and pipeline projects. We submit comments on all

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<sup>7</sup> See *id.* at 677.

<sup>8</sup> Compare *id.* at 677–79 with Brief of the Institute for Policy Integrity at New York University School of Law as Amicus Curiae in Support of Respondents, *Zero Zone, Inc.*, 832 F.3d 654 (No. 14-2147), [https://policyintegrity.org/documents/Policy\\_Integrity\\_Amicus\\_Brief\\_SCC\\_July2015.pdf](https://policyintegrity.org/documents/Policy_Integrity_Amicus_Brief_SCC_July2015.pdf).

<sup>9</sup> Cass R. Sunstein, Opinion, *A Court Ruling That Could Save the Planet*, BLOOMBERG (Aug. 12, 2016), <https://www.bloomberg.com/opinion/articles/2016-08-12/a-court-ruling-that-could-save-the-planet>.

<sup>10</sup> *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222, 1240 (10th Cir. 2017).

<sup>11</sup> See *id.* at 1236.

<sup>12</sup> See Brief of the Institute for Policy Integrity at New York University School of Law as Amicus Curiae in Support of Petitioners-Appellants, *WildEarth Guardians*, 870 F.3d 1222 (10th Cir. 2017) (No. 15-8109), [https://policyintegrity.org/documents/10th\\_Cir\\_BLM\\_Brief.pdf](https://policyintegrity.org/documents/10th_Cir_BLM_Brief.pdf).

relevant proceedings,<sup>13</sup> and often file amicus briefs in lawsuits when environmental analyses of lease sales or pipeline projects are improper.<sup>14</sup>

Our research has also explored state-level applications of the SCC, typically in energy policy contexts. In October 2017, we released a report offering guidelines on how the SCC can best be used in state-level policies,<sup>15</sup> and later launched a website tracking state-level use of the metric.<sup>16</sup> Our research and expertise on these issues plays an important role in our state-level advocacy strategy. We have worked with policymakers in California, Colorado, Minnesota, Nevada, New York, and Virginia to promote intelligent use of the SCC. For instance, our comments helped persuade the California Public Utilities Commission to incorporate the SCC into the societal cost test utilities must use to evaluate installations of distributed energy resources, such as rooftop solar panels.<sup>17</sup> As a

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<sup>13</sup> See, e.g., Inst. for Policy Integrity, Comments on Rio Grande LNG Project Draft EIS, CP16-454-000, CP16-455-000 (Dec. 3, 2018), [https://policyintegrity.org/documents/FERC\\_Rio\\_Grande\\_Joint\\_SCC\\_Comments.pdf](https://policyintegrity.org/documents/FERC_Rio_Grande_Joint_SCC_Comments.pdf); Inst. for Policy Integrity, Comments on Draft Supplemental Environmental Impact Statement and Resource Management Plan Amendment (Dec. 21, 2018), [https://policyintegrity.org/documents/Miles\\_and\\_Buffalo\\_SEIS\\_RMP.pdf](https://policyintegrity.org/documents/Miles_and_Buffalo_SEIS_RMP.pdf); Inst. for Policy Integrity, Comments on the Environmental Assessments for September 2019 Competitive Oil and Gas Lease Sales in Pecos District, Oklahoma Field, and Rio Puerco Field Offices (May 24, 2019), [https://policyintegrity.org/documents/BLM\\_Sept\\_2019\\_Oil\\_and\\_Gas\\_Lease\\_EAs\\_Joint\\_SCC\\_Comments\\_2019.5.24-final.pdf](https://policyintegrity.org/documents/BLM_Sept_2019_Oil_and_Gas_Lease_EAs_Joint_SCC_Comments_2019.5.24-final.pdf).

<sup>14</sup> See, e.g., Motion of the Institute for Policy Integrity at New York University to Participate as Amicus Curiae and Proposed Amicus Brief in Support of Plaintiffs, High Country Conservation Advocates v. U.S. Forest Serv., 52 F. Supp. 3d 1174 (D. Colo. 2014) (No. 13-cv-01723-RBJ), [https://policyintegrity.org/documents/West\\_Elk\\_Amicus\\_Motion\\_Brief\\_Policy\\_Integrity.pdf](https://policyintegrity.org/documents/West_Elk_Amicus_Motion_Brief_Policy_Integrity.pdf); Brief of the Institute for Policy Integrity at New York University as Amicus Curiae in Support of Petitioners, Del. Riverkeeper Network v. Fed. Energy Regulatory Comm'n, No. 18-1128 (D.C. Cir. Dec. 28, 2018), [https://policyintegrity.org/documents/PennEastPolicy\\_Integrity\\_Amicus\\_filed.pdf](https://policyintegrity.org/documents/PennEastPolicy_Integrity_Amicus_filed.pdf).

<sup>15</sup> See ILIANA PAUL ET AL., THE SOCIAL COST OF GREENHOUSE GASES AND STATE POLICY (2017), [https://policyintegrity.org/files/publications/SCC\\_State\\_Guidance.pdf](https://policyintegrity.org/files/publications/SCC_State_Guidance.pdf).

<sup>16</sup> See INST. FOR POLICY INTEGRITY, *States Using the SCC, COST OF CARBON POLLUTION*, <https://costofcarbon.org/states> (last visited Oct. 3, 2019).

<sup>17</sup> See Inst. for Policy Integrity, Reply Comments of the Institute for Policy Integrity on Staff Proposal Recommending a Societal Cost Test, Rulemaking 14-10-003 (Oct. 2, 2014), [https://policyintegrity.org/documents/04-06-17\\_Reply\\_Comments\\_on\\_SCT\\_Staff\\_Report.PDF](https://policyintegrity.org/documents/04-06-17_Reply_Comments_on_SCT_Staff_Report.PDF); PUB. UTILS. COMM'N OF STATE OF CAL., DECISION 19-05-019, DECISION ADOPTING COST-EFFECTIVENESS ANALYSIS FRAMEWORK POLICIES FOR ALL DISTRIBUTED ENERGY RESOURCES (2019), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M293/K833/293833387.pdf>.

result of this decision, California will be able to create incentives for encouraging installations that have the greatest benefit to the public. We also submitted comments to the Public Utility Commission of Nevada, suggesting that it require utilities to evaluate the SCC associated with their proposed resource mixes in their Integrated Resource Plans. The Commission ultimately adopted a version of the regulation in line with our advocacy.<sup>18</sup> In a Colorado proceeding, our expert report encouraged policymakers to use the social cost of carbon in order to better quantify and communicate the benefits of the state's Zero Emission Vehicle program.<sup>19</sup> And the New York State Public Service Commission relied on our input in choosing to base its Zero Emission Credit payment program for energy generators on the SCC value; we later helped defend the program when it faced a federal lawsuit.<sup>20</sup>

#### B. *Leveraging Administrative Law Scholarship in Litigation*

Policy Integrity's expertise and scholarship on administrative law issues has played an important role in several major court cases and policy debates. Our amicus briefs have received significant attention in several Supreme Court cases on environmental rules. In *Utility Air Regulatory Group v. EPA*,<sup>21</sup> dealing with the regulation

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<sup>18</sup> See W. Res. Advocates, Comments in Support of Proposed Regulations Implementing Senate Bill 65, 17-07020 (July 25, 2018), [https://policyintegrity.org/documents/WRA-EDF-IPI\\_NPUC\\_SCC\\_Comment\\_7-25-18.pdf](https://policyintegrity.org/documents/WRA-EDF-IPI_NPUC_SCC_Comment_7-25-18.pdf); PUB. UTILS. COMM'N OF NEV., DOCKET NO. 17-07020, PROPOSED REGULATION IS ADOPTED AS PERMANENT (2018), [http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS\\_2015\\_THRU\\_PRESENT/2017-7/32153.pdf](http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2015_THRU_PRESENT/2017-7/32153.pdf).

<sup>19</sup> See PETER H. HOWARD & JASON A. SCHWARTZ, EXPERT REPORT OF DR. PETER H. HOWARD, PH.D. AND JASON A. SCHWARTZ, J.D. (2019), [https://policyintegrity.org/documents/ZEV\\_expert\\_report\\_2019.pdf](https://policyintegrity.org/documents/ZEV_expert_report_2019.pdf).

<sup>20</sup> See Letter from Richard L. Kauffman, Chairman of Energy and Fin. for N.Y., to N.Y. State Assembly Members (Mar. 22, 2017) [https://policyintegrity.org/documents/Letter\\_%281%29.pdf](https://policyintegrity.org/documents/Letter_%281%29.pdf); see also Inst. for Policy Integrity, Comments on New York State Department of Public Service, Staff White Paper on Clean Energy Standard, Docket No. 81 (Apr. 22, 2016), [https://policyintegrity.org/documents/Comments\\_on\\_Clean\\_Energy\\_Standard\\_hite\\_Paper.pdf](https://policyintegrity.org/documents/Comments_on_Clean_Energy_Standard_hite_Paper.pdf); Brief of Independent Economists as *Amici Curiae* in Support of Defendants-Appellees and Affirmance, *Coal. for Competitive Elec. v. Zibelman*, 906 F.3d 41 (2d Cir. 2018) (No. 17-2654-cv), [https://policyintegrity.org/documents/Independent\\_Economists\\_Brief\\_for\\_Defendants-Appellees.pdf](https://policyintegrity.org/documents/Independent_Economists_Brief_for_Defendants-Appellees.pdf).

<sup>21</sup> See *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014); see also Brief of Institute for Policy Integrity at New York University School of Law as Amicus Curiae in Support of Respondents, *Util. Air Regulatory Grp.*, 573 U.S. 302 (Nos. 12-1146, 12-1248, 12-1254, 12-1268, 12-1269, and 12-1272),

of greenhouse gases, our brief developed a detailed argument about the regulatory history, showing that multiple presidential administrations over several decades have consistently applied the prevention of significant deterioration permitting scheme to all pollutants regulated under the Clean Air Act. This analysis, which had not been developed in other briefs, led to questions from the bench during oral argument.<sup>22</sup> The Court's ruling affirmed EPA's authority to regulate greenhouse gases under the prevention of significant deterioration program, as our brief suggested it should.

When the Supreme Court heard *EPA v. EME Homer City Generation*,<sup>23</sup> which dealt with the Cross-State Air Pollution Rule, our brief argued that the Good Neighbor Provision underlying the rule allows for flexibility and cost minimization while controlling pollution.<sup>24</sup> The brief built on my scholarship,<sup>25</sup> and when the Court upheld the Cross-State Air Pollution Rule, Justice Ginsburg, who wrote the majority opinion, cited one of my articles in her opening paragraph.<sup>26</sup>

In *Michigan v. EPA*, the Court's 2015 review of EPA's Mercury and Air Toxics Standards, an argument put forward only in Policy Integrity's brief occupied roughly half of the discussion at oral argument. Our brief argued that EPA cannot meaningfully assess compliance costs at the initial listing stage of its regulatory process, because costs inextricably depend on subsequent regulatory

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[https://policyintegrity.org/documents/Policy\\_Integrity\\_SCOTUS\\_Amicus\\_Brief\\_in\\_PSD\\_Case.pdf](https://policyintegrity.org/documents/Policy_Integrity_SCOTUS_Amicus_Brief_in_PSD_Case.pdf).

<sup>22</sup> See Brief for EPA as Amicus Curiae Supporting Respondent, *Util. Air Regulatory Grp.*, 573 U.S. 302 (Nos. 12-1146, 12-1248, 12-1254, 12-1268, 12-1269, and 12-1272); Transcript of Oral Argument at 6, *Util. Air Regulatory Grp.*, 573 U.S. 302 (Nos. 12-1146, 12-1248, 12-1254, 12-1268, 12-1269, and 12-1272), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2013/12-1146\\_8n6a.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2013/12-1146_8n6a.pdf).

<sup>23</sup> See *EPA v. EME Homer City Generation*, 572 U.S. 489 (2014).

<sup>24</sup> See Brief for EPA et al. as Amicus Curiae Supporting Petitioners, *EME Homer City Generation*, 572 U.S. 489 (Nos. 12-1182 and 12-1183), [https://policyintegrity.org/documents/CSAPR\\_Amicus\\_Brief.pdf](https://policyintegrity.org/documents/CSAPR_Amicus_Brief.pdf).

<sup>25</sup> See, e.g., Richard L. Revesz, *Federalism and Environmental Regulation: A Public Choice Analysis*, 115 HARV. L. REV. 555 (2001); Richard L. Revesz, *Federalism and Interstate Environmental Externalities*, 144 U. PA. L. REV. 2341 (1996); Richard L. Revesz, *Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation*, 67 N.Y.U. L. REV. 1210 (1992).

<sup>26</sup> See *EME Homer City Generation*, 572 U.S. at 495.

design choices.<sup>27</sup> While the Court ruled 5-4 to remand the mercury rule to the D.C. Circuit Court, Justice Kagan's dissent focused on the argument in our brief.<sup>28</sup>

Our scholarship has also helped frame an important debate over EPA's authority in regulating greenhouse gas emissions. When the Obama administration promulgated the Clean Power Plan, which set limits on emissions from the electric power sector and gave states broad discretion in how to reach them, many critics argued that the agency had no authority to regulate emissions outside the fence line of a power plant. Our article on the issue analyzed several past instances where EPA had taken a similar course of action, bolstering the case for a broader and more flexible regulatory scheme.<sup>29</sup> Policy Integrity's brief in litigation over the rule relied on the article,<sup>30</sup> as did briefs by other parties.<sup>31</sup> This debate remains relevant, as the same issue may determine the legality of the Trump administration's significant rollback of the Clean Power Plan.

In another academic article, Kimberly Castle and I analyzed the historical and administrative law issues related to EPA's treatment of the benefits of particulate matter pollution reductions.<sup>32</sup> The Trump administration's changes in how these benefits are assessed could have profound effects on the future of environmental regulation, and our article provides clear evidence that the changes are a major deviation from decades of bipartisan precedent. Policy Integrity's comments in recent administrative proceedings have

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<sup>27</sup> See Brief of the Institute for Policy Integrity as *Amicus Curiae* in Support of Respondents, *Michigan v. EPA*, 135 S. Ct. 2699 (2015) (Nos. 14-46, 14-47, and 14-49), [https://policyintegrity.org/documents/SCOTUS\\_brief\\_MATS\\_March2015.pdf](https://policyintegrity.org/documents/SCOTUS_brief_MATS_March2015.pdf).

<sup>28</sup> See *Michigan*, 135 S. Ct. at 2714-16 (5-4 decision) (Kagan, J., dissenting).

<sup>29</sup> See Richard L. Revesz et al., *Familiar Territory: A Survey of Legal Precedents for the Clean Power Plan*, 46 ENVTL. L. REV. 10,190 (2016).

<sup>30</sup> See Brief of the Institute as *Amicus Curiae* in Support of Respondents, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. June 2, 2016), [https://policyintegrity.org/documents/PPP\\_Amicus\\_April2016.pdf](https://policyintegrity.org/documents/PPP_Amicus_April2016.pdf).

<sup>31</sup> See, e.g., Environmental and Public Health Respondent-Intervenors' Opposition to Motions for Stay, *West Virginia*, No. 15-1363 (Dec. 8, 2015), <https://www.edf.org/sites/default/files/content/ngo-resp-opp.pdf>; Final Brief of Intervenor Environmental and Public Health Organizations in Support of Respondents, *West Virginia*, No. 15-1363 (Apr. 22, 2016), [https://www.edf.org/sites/default/files/content/edf\\_and\\_others\\_final.pdf](https://www.edf.org/sites/default/files/content/edf_and_others_final.pdf).

<sup>32</sup> See Kimberly M. Castle & Richard L. Revesz, *Environmental Standards, Thresholds, and the Next Battleground of Climate Change Regulations*, 103 MINN. L. REV. 3 (2018).

relied on the article,<sup>33</sup> and it could play an important role in upcoming court challenges to some of the Trump administration's actions.

### C. *Improving Economic Analysis Techniques*

Policy Integrity's scholarship and advocacy have helped advance several new analytical methods that can better inform policymaking. This has led to some significant impacts, especially in our natural resources and electricity policy work.

Since 2009, we have advocated that leasing decisions for natural resources on federal lands account for "option value," a common financial concept that places value on delaying irreversible decisions in order to gain more information. We suggested policy changes through an academic article<sup>34</sup> and numerous public comments.<sup>35</sup> We then brought a challenge against the Interior Department in the U.S. Court of Appeals for the D.C. Circuit, focusing largely on this issue. In the case, *Center for Sustainable Economy v. Jewell*,<sup>36</sup> Policy Integrity co-founder and senior advisor Michael Livermore represented the plaintiff challenging the Bureau of Ocean Energy Management's 2012–2017 leasing plan for the Gulf of Mexico and the Alaskan coast, arguing that incomplete and flawed economic analysis leads the government to sell resource leases too quickly and too cheaply, potentially costing the American public billions of dollars and leading to high-risk drilling. The decision acknowledged the importance of considering option value in future situations when the value is more readily quantifiable.<sup>37</sup> The Department of the Interior soon began to incorporate our input,

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<sup>33</sup> See Inst. for Policy Integrity, Comments to EPA on the Science Advisory Board's Review of National Emissions Standards for Hazardous Air Pollutants, RIN 2060-AT99 (May 29, 2019), [https://policyintegrity.org/documents/J\\_Lienke\\_written\\_statement\\_for\\_SAB\\_re\\_MATS\\_Reconsideration\\_%28signed%29.pdf](https://policyintegrity.org/documents/J_Lienke_written_statement_for_SAB_re_MATS_Reconsideration_%28signed%29.pdf).

<sup>34</sup> See Michael A. Livermore, *Patience Is an Economic Virtue: Real Options, Natural Resources, and Offshore Oil*, 84 U. COLO. L. REV. 581 (2012).

<sup>35</sup> See, e.g., Inst. for Policy Integrity, Comments on Minerals Management Service Draft Proposed Plan (July 31, 2009), [https://policyintegrity.org/documents/MMS\\_Second\\_Round\\_Comments.pdf](https://policyintegrity.org/documents/MMS_Second_Round_Comments.pdf); Inst. for Policy Integrity, Comments on the Draft Proposed 2017–2022 Outer Continental Shelf Oil and Gas Leasing Program, BOEM-2014-0059 (Mar. 30, 2015), [https://policyintegrity.org/documents/Comments\\_to\\_BOEM\\_2017-2022\\_Offshore\\_Program.pdf](https://policyintegrity.org/documents/Comments_to_BOEM_2017-2022_Offshore_Program.pdf).

<sup>36</sup> See *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 610–12 (D.C. Cir. 2015).

<sup>37</sup> See *id.*

as the offshore oil and gas leasing program proposed in early 2015 devoted twelve pages to option value and related resource valuation concepts, using language that closely resembles the arguments Policy Integrity has repeatedly made to the agency.<sup>38</sup> Likely effects of this change include higher minimum bids for lease sales and delayed leasing of sensitive areas.

We are also working to improve the quality of analysis in environmental reviews conducted under the National Environmental Policy Act. For instance, a recent Supplemental Environmental Assessment prepared by the Bureau of Land Management speculates that new oil and gas leases could reduce global greenhouse emissions because natural gas could replace dirtier fuels. Our comments to the agency explain that such speculation about substitution effects is inappropriate and fails to consider factors such as potential increases in oil demand (and emissions) that could result from greater extraction and resulting price reductions. We encourage substitution effects to be modeled, so that decisionmakers can fully consider the consequences of new projects or policy changes.<sup>39</sup> And in our comments on a leasing proposal in the Arctic National Wildlife Refuge, we argue that the agency did not consider alternative development scenarios that would best reduce environmental and social harms, nor did it analyze an alternative that would account for the option value of irreversible drilling. We encourage the agency to better analyze leasing alternatives, substitution effects, and the value of the delicate ecosystems.<sup>40</sup>

Much of our state-level work on electricity policy involves research and advocacy related to monetizing the environmental impacts of greenhouse gas emissions and conventional air pollution. As policymakers are able to better quantify these impacts, they can work to appropriately reduce pollution. As part of the New York

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<sup>38</sup> See BUREAU OF OCEAN ENERGY MGMT., 2017–2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM 8.1.1 (2015).

<sup>39</sup> See Inst. for Policy Integrity et al., Comments on Supplemental Environmental Assessment for the May 2015–August 2016 Sold and Issued Leases, DOI-BLM-WY-0000-2019-0007-EA (Apr. 22, 2019), [https://policyintegrity.org/documents/Wyoming\\_Oil\\_and\\_Gas\\_Lease\\_Supplemental\\_EA\\_Joint\\_SCC\\_Comments\\_2019.4.22-final.pdf](https://policyintegrity.org/documents/Wyoming_Oil_and_Gas_Lease_Supplemental_EA_Joint_SCC_Comments_2019.4.22-final.pdf).

<sup>40</sup> See Inst. for Policy Integrity, Comments on Arctic Coastal Plain Draft EIS (Mar. 13, 2019), [https://policyintegrity.org/documents/Arctic\\_Coastal\\_Plain\\_DEIS\\_Comments\\_2019.3.13-final.pdf](https://policyintegrity.org/documents/Arctic_Coastal_Plain_DEIS_Comments_2019.3.13-final.pdf).

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State Public Service Commission’s Value of Distributed Energy Resources proceeding, we have led a working group of diverse stakeholders seeking to identify the best methods for quantifying the environmental value of distributed energy resources.<sup>41</sup> These resources often reduce emissions of both criteria air pollutants and carbon dioxide. Our scholarship on the quantification and monetization of air pollution externalities<sup>42</sup> has been influential throughout this process. If these methods are further developed and implemented, policymakers will be able to use new analytical tools to evaluate key energy policies.

D. *Bringing Economic Arguments Beyond the Environmental Sphere*

In addition to our work on the environment, energy, and natural resources, Policy Integrity regularly engages on a broader set of policy issues, such as women’s health and federal regulatory review, principally to ensure the proper consideration of the costs and benefits of administrative actions.

Policy Integrity helped contribute to a significant recent legal victory, when district courts in Washington State, Oregon, and California blocked a Trump administration rule that makes harmful changes to federally-funded women’s health services. In February 2019, the Department of Health and Human Services announced onerous restrictions to its Title X program, likely forcing the shutdown of some family planning clinics and closing off access to others for low-income women. We submitted comments on the rule<sup>43</sup> and amicus briefs<sup>44</sup> supporting requests for preliminary

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<sup>41</sup> See JEFFREY SHRADER ET AL., VALUE OF DISTRIBUTED ENERGY RESOURCES – E/EJ VALUE INFORMAL SUBGROUP – TRACK 1 AND 2 REPORT (2018), [https://policyintegrity.org/documents/DER\\_Value\\_Stack\\_E\\_Value\\_Report\\_07.09.18.pdf](https://policyintegrity.org/documents/DER_Value_Stack_E_Value_Report_07.09.18.pdf).

<sup>42</sup> See JEFFREY SHRADER ET AL., VALUING POLLUTION REDUCTIONS (2018), [https://policyintegrity.org/files/publications/Valuing\\_Pollution\\_Reductions.pdf](https://policyintegrity.org/files/publications/Valuing_Pollution_Reductions.pdf).

<sup>43</sup> See Inst. for Policy Integrity, Comments to HHS on the Proposed Rule, Compliance With Statutory Program Integrity Requirements, HHS-OS-2018-0008 (July 31, 2016), [https://policyintegrity.org/documents/HHS\\_Title\\_X\\_Comments.pdf](https://policyintegrity.org/documents/HHS_Title_X_Comments.pdf).

<sup>44</sup> See Brief of the Institute for Policy Integrity as *Amicus Curiae* in Support of Plaintiff’s Motion for Preliminary Injunction, *California v. Azar*, 385 F. Supp. 3d 960 (N.D. Cal. 2019) (Nos. 19-cv-01184-EMC and 19-cv-01195-EMC); Motion to Appear as *Amicus Curiae* and to File Memorandum in Support of Motion for Preliminary Injunction, *Washington v. Azar*, 376 F. Supp. 3d 1119 (E.D. Wash. 2019) (No. 1:19-cv-03040-SAB).

injunction in four court cases. The U.S. District Court for the Eastern District of Washington referred to our brief in the reasoning for its decision to grant an injunction.<sup>45</sup> And the ruling by the U.S. District Court for the Northern District of California cites our brief and devotes a lengthy discussion to the arguments we advanced.<sup>46</sup> Our involvement in this debate stemmed from our past capacity-building efforts, when, a decade ago, we advised lawyers at Planned Parenthood who sought to include economic analysis in their legal arguments.<sup>47</sup>

Policy Integrity's work on federal regulatory review has helped establish a bipartisan consensus on needed regulatory reforms. In 2016, Policy Integrity convened a roundtable of former administrators and acting administrators of the Office of Information and Regulatory Affairs to discuss ways to strengthen the regulatory review process. Nine individuals took part, and we compiled the consensus recommendations and some associated research in a report, advocating a set of commonsense reforms.<sup>48</sup> These recommendations focused on such issues as improved retrospective review, independent agency review, and updated methodology guidance. The report offers a path forward for a future presidential administration to improve the federal regulatory process.

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<sup>45</sup> See *Washington*, 376 F. Supp. 3d at 1131.

<sup>46</sup> See *California*, 385 F. Supp. 3d at 1014–19.

<sup>47</sup> See Nat'l Latina Inst. for Reprod. Health et al., Comments in Support of HHS's Proposal to Rescind the Regulation Entitled "Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law," RIN-0991-AB49 (Apr. 9, 2009), <https://policyintegrity.org/documents/CRRcommentstoHHSreRecisionpdf.pdf>.

<sup>48</sup> See INST. FOR POLICY INTEGRITY, STRENGTHENING REGULATORY REVIEW: RECOMMENDATIONS FOR THE TRUMP ADMINISTRATION FROM FORMER OIRA LEADERS (2016), [https://policyintegrity.org/files/publications/RegulatoryReview\\_Nov2016.pdf](https://policyintegrity.org/files/publications/RegulatoryReview_Nov2016.pdf).

Other Policy Integrity projects have focused on predatory lending regulations,<sup>49</sup> public health rules,<sup>50</sup> housing policy,<sup>51</sup> net neutrality,<sup>52</sup> legal aid for domestic violence survivors,<sup>53</sup> and a host of other non-environmental issues. Through this work, we have helped bring rational economic arguments into regulatory debates that sometimes lacked this analysis. And in doing so, we have built a network of collaborators and helped improve the capacity of many advocacy groups to incorporate economic arguments in their work.

## II. INFLUENCING THE PUBLIC CONVERSATION ON KEY ISSUES

Our staff members regularly publish op-eds and speak to journalists about a wide range of policy topics. We believe that our publications and media efforts have helped convey important messages to policymakers and the public, shaping the debate on critical issues. For instance, I have published more than twenty op-eds on environmental policy issues since the beginning of the Trump administration, including a *Los Angeles Times* piece (co-authored with Policy Integrity board member Ignacia Moreno) about the adverse effects of Trump-era policy changes on Latino health,<sup>54</sup> a *Washington Post* piece (co-authored with Policy Integrity

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<sup>49</sup> See, e.g., Inst. for Policy Integrity, Comments on Proposals Under Consideration to Limit Certain Practices for Payday, Auto Title, and Similar Loans (Dec. 7, 2015), [https://policyintegrity.org/documents/CFPBCComments\\_Payday.pdf](https://policyintegrity.org/documents/CFPBCComments_Payday.pdf).

<sup>50</sup> See, e.g., Inst. for Policy Integrity, Comments on Proposed Revisions to Implementing Policies for Section 1557 of the Patient Protection and Affordable Care Act, HHS-OCR-2019-0007 (Aug. 13, 2019), [https://policyintegrity.org/documents/PolicyIntegrity\\_Section1557Comments\\_2019.08.13.pdf](https://policyintegrity.org/documents/PolicyIntegrity_Section1557Comments_2019.08.13.pdf).

<sup>51</sup> See, e.g., Inst. for Policy Integrity, Comments on Proposed Changes to the Restrictions on Housing Assistance for Certain Categories of Noncitizens, HUD-2019-0044-0001 (July 9, 2019), [https://policyintegrity.org/documents/PolicyIntegrity\\_HUDEligibilityRule\\_forSubmission.pdf](https://policyintegrity.org/documents/PolicyIntegrity_HUDEligibilityRule_forSubmission.pdf).

<sup>52</sup> See, e.g., INST. FOR POLICY INTEGRITY, NAVIGATING NET NEUTRALITY: PROMOTING EFFECTIVE AND ADAPTIVE BROADBAND POLICY THROUGH STRUCTURAL DESIGN (2014), [https://policyintegrity.org/files/publications/Navigating\\_Net\\_Neutrality.pdf](https://policyintegrity.org/files/publications/Navigating_Net_Neutrality.pdf).

<sup>53</sup> See, e.g., INST. FOR POLICY INTEGRITY, SUPPORTING SURVIVORS: THE ECONOMIC BENEFITS OF PROVIDING CIVIL LEGAL ASSISTANCE TO SURVIVORS OF DOMESTIC VIOLENCE (2015), <https://policyintegrity.org/files/publications/SupportingSurvivors.pdf>.

<sup>54</sup> See Ignacia S. Moreno & Richard L. Revesz, Opinion, *Latinos Are Disproportionately Affected by Asthma, and Trump's Policies Are Making It Worse*, L.A. TIMES (Sept. 1, 2017), <https://www.latimes.com/opinion/op-ed/la-oe-moreno-revesz-latinos-asthma-trump-20170901-story.html>.

Regulatory Policy Director Jack Lienke) on how the administration is failing to help states reduce smog,<sup>55</sup> and a *Slate* piece on the dubious tactics underlying recent EPA policy changes.<sup>56</sup> These pieces have helped bring public attention to some of the administration's problematic actions. Policy Integrity Natural Resource Director Jayni Hein's 2015 *Washington Post* op-ed highlighted the fact that oil companies can lease public land for the price of a cup of coffee,<sup>57</sup> shining a light on flaws in the federal leasing program as we worked to encourage reforms. And Legal Director Jason Schwartz's op-ed on the legality of the Mercury and Air Toxics Standards<sup>58</sup> drew attention to arguments in our Supreme Court brief<sup>59</sup> as the Court was considering the case.

Policy Integrity has become one of the major sources of insight and analysis on federal greenhouse gas regulations. We have published multiple *New York Times* op-eds on the Clean Power Plan<sup>60</sup> and the legality of climate rule rollbacks.<sup>61</sup> We also regularly

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<sup>55</sup> See Richard L. Revesz & Jack Lienke, Opinion, *Here's How the EPA Can Help States with Their Smog Problems*, WASH. POST (May 12, 2017), [https://www.washingtonpost.com/opinions/heres-how-the-epa-can-help-states-with-their-smog-problems/2017/05/12/f3650c8c-31bc-11e7-9534-00e4656c22aa\\_story.html](https://www.washingtonpost.com/opinions/heres-how-the-epa-can-help-states-with-their-smog-problems/2017/05/12/f3650c8c-31bc-11e7-9534-00e4656c22aa_story.html).

<sup>56</sup> See Richard L. Revesz, Opinion, *The Trump Administration Might Be Too Incompetent to Undermine Environmental Regulations*, SLATE (June 3, 2019), <https://slate.com/technology/2019/06/trump-administration-cant-actually-undermine-environmental-regulation-too-incompetent.html>.

<sup>57</sup> See Jayni Foley Hein, Opinion, *Oil Companies Are Drilling on Public Land for the Price of a Cup of Coffee. Here's Why That Should Change*, WASH. POST (June 16, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/06/16/oil-companies-are-drilling-on-public-land-for-the-price-of-a-cup-of-coffee-heres-why-that-should-change/>.

<sup>58</sup> See Jason A. Schwartz, Opinion, *The Mathematics of Life-Saving Regulation*, HILL (Apr. 3, 2015), <https://thehill.com/blogs/congress-blog/energy-environment/237771-the-mathematics-of-life-saving-regulation>.

<sup>59</sup> See Brief of the Institute for Policy Integrity as *Amicus Curiae* in Support of Respondents at 34, *Michigan v. EPA*, 135 S. Ct. 2699 (2015) (Nos. 14-46, 14-47, and 14-49), [https://policyintegrity.org/documents/SCOTUS\\_brief\\_MATS\\_March2015.pdf](https://policyintegrity.org/documents/SCOTUS_brief_MATS_March2015.pdf).

<sup>60</sup> See Richard L. Revesz & Jack Lienke, Opinion, *The E.P.A.'s Smoke and Mirrors on Climate*, N.Y. TIMES (Oct. 9, 2017), <https://www.nytimes.com/2017/10/09/opinion/environmental-protection-obama-pruitt.html>; Richard L. Revesz & Jack Lienke, Opinion, *Obama Takes a Crucial Step on Climate Change*, N.Y. TIMES (Aug. 3, 2015), <https://www.nytimes.com/2015/08/04/opinion/obama-takes-a-crucial-step-on-climate-change.html>.

<sup>61</sup> See Richard L. Revesz, Opinion, *On Climate, the Facts and Law Are Against Trump*, N.Y. TIMES (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/opinion/climate-report-trump.html>.

comment to major media outlets on policy developments, such as changes in EPA analytical approaches<sup>62</sup> and the interplay between election results and climate regulations.<sup>63</sup>

Our roundup of the Trump administration's poor record in court challenges on federal agency actions<sup>64</sup> has played a key role in highlighting the legal shortcomings of the administration's attempts to change policy. Our data reveals that the administration has prevailed less than eight percent of the time when its federal agency actions have been challenged in court. By contrast, past administrations have prevailed in nearly seventy percent of cases.<sup>65</sup> Our roundup has been repeatedly referenced by major news outlets discussing the administration's legal failures.<sup>66</sup>

### III. EDUCATION AND TRAINING

Education and training are central to Policy Integrity's mission. Through our Regulatory Policy Clinic and Advanced Regulatory Policy Clinic at New York University School of Law and our fellowship program, we offer future lawyers and policy professionals the opportunity to bolster their knowledge of regulatory policy, economics, administrative law, and advocacy techniques.

Policy Integrity staff members teach New York University School of Law's Regulatory Policy Clinic, which offers students

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<sup>62</sup> See, e.g., Lisa Friedman, *E.P.A. Plans to Get Thousands of Pollution Deaths Off the Books by Changing Its Math*, N.Y. TIMES (May 20, 2019), <https://www.nytimes.com/2019/05/20/climate/epa-air-pollution-deaths.html>.

<sup>63</sup> See Evan Halper, *Democratic Elector Gains Will Give a Boost to California in Fight Against Trump*, L.A. TIMES (Nov. 7, 2018), <https://www.latimes.com/politics/la-na-pol-midterm-fallout-california20181107-story.html>.

<sup>64</sup> See *Roundup: Trump-Era Agency Policy in the Courts*, INST. FOR POLICY INTEGRITY, <https://policyintegrity.org/deregulation-roundup> (last visited Oct. 15, 2019).

<sup>65</sup> See David Zaring, *Reasonable Agencies*, 96 VA. L. REV. 135, 135 (2010) (“[C]ourts affirm agencies’ actions slightly more than two thirds of the time.”); *id.* at 171 (listing agency win percentages in various academic studies).

<sup>66</sup> See, e.g., Margot Sanger-Katz, *For Trump Administration, It Has Been Hard to Follow the Rules on Rules*, N.Y. TIMES (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/upshot/for-trump-administration-it-has-been-hard-to-follow-the-rules-on-rules.html>; Timothy Puko, *For Trump's Deregulatory Agenda, a Reckoning Nears*, WALL ST. J. (Dec. 3, 2018), <https://www.wsj.com/articles/for-trumps-deregulatory-agenda-a-reckoning-nears-1543894538>.

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practical experience in administrative law and policy analysis. Students work with Policy Integrity's legal advocates and economic scholars to tackle important regulatory matters, covering all stages of the federal rulemaking process as well as policy-related litigation. Students learn our approach, which prioritizes the internalization of externalities, properly conducted economic analysis, and regulatory decisions that increase net benefits to society. As part of our clinics, students contribute to amicus briefs in major litigation, public comments on major federal and state rulemaking, and research on policy issues.

Our fellowship program allows talented lawyers and economists to spend two years with us honing their skills in policy research and advocacy while contributing to our work. During their time at Policy Integrity, fellows have authored influential academic articles and amicus briefs. Many former fellows have gone onto accomplished careers in policy and academia.

Dozens of alumni from our clinics and fellowship program have moved into prestigious positions in government, the private and non-profit sectors, and academia, where they are helping to advance rational policymaking around the country. Several have gone on to work at the Environmental Protection Agency, Department of Justice, Consumer Financial Protection Bureau, and other government agencies. Others are playing key roles in the advocacy community at organizations including the Environmental Defense Fund, the American Civil Liberties Union, and the Immigrant Legal Advocacy Project.

#### IV. A DECADE OF SHAPING POLICY DEBATES

Through the research, advocacy, and training efforts discussed above, Policy Integrity has made a mark on the policy landscape. In September 2018, we held our tenth annual policy conference in New York City, convening an illustrious panel of speakers to discuss the role of rationality in energy and environmental policy. The rest of this special issue of the *Environmental Law Journal* focuses on those proceedings.

Thanks to a decade of Policy Integrity's efforts, supporters of rational, economically informed environmental policymaking are no longer so rare. As our work continues into a second decade, we hope that this approach will take hold more firmly, leading to smarter policies that benefit the public.