Dismantling the Green Economy in the United States

By Kenneth J. Warren*

Green economies promote environmental objectives including sustainable resource management and climate change mitigation and adaptation, while also advancing economic and social objectives. In the vernacular of the United Nations, a green economy grows employment and income through public and private investment in economic activities, infrastructure and assets that allow reduced carbon emissions and pollution, enhanced energy and resource efficiency, and maintenance of biodiversity and ecosystem services. Renewable energy, sustainable manufacturing practices, green buildings and infrastructure, and sustainable agriculture are among the key elements of a green economy.

Under President Biden's leadership, the United States worked toward meeting its greenhouse gas emissions targets and the reductions contemplated in the Paris Agreement and the United Nations Framework Convention on Climate Change. Federal incentives to spur the green economy in the United States while limiting emissions of greenhouse gases (GHGs) and other pollutants were in full throttle. The Biden Administration implemented the Inflation Reduction Act, largely a clean energy bill, to provide tax credits and grants for electrical vehicles, home energy improvements, solar and wind energy installations, and other activities reducing reliance on fossil fuels.

The cost of transforming the economy is substantial, but so are the benefits. The U.S. Department of Energy estimated that by 2023, around 3.5 million Americans worked in renewable energy jobs which continued to grow at more than twice the rate of the overall U.S. labor market. Government incentives also contributed to additional use of clean energy technologies such as solar and wind and to development and deployment of electric and

sustainable transportation technologies. The Biden Administration touted these steps as the beginning of our nation's efforts to slow or halt climate impacts of GHS emissions including rising sea level, extreme precipitation events, and droughts and floods, all of which often disproportionately impact disadvantaged communities.

The 2024 election reversed federal government support for this path. In a speech last month before the United Nations General Assembly, President Donald Trump called climate change "the greatest con job ever perpetrated on the world, in my opinion." One of President Trump's initial actions following his 2025 inauguration was to issue an Executive Order directing the withdrawal of the United States from the Paris Agreement. The Trump Administration likewise committed to develop oil, gas and coal resources, extended dates by which oil and gas facilities must comply with methane standards, and successfully lobbied Congress to repeal or limit many of the Inflation Reduction Act incentives. It issued orders halting many solar and offshore wind development projects, including some that were almost completely constructed.

To further these policies, the U.S. Environmental Protection Agency (EPA) proposed regulatory changes that if adopted may result in a long-lasting retreat from the green economy and efforts to mitigate climate change. Two of these proposals are discussed below.

Rescinding The Endangerment Finding

The legal basis for much of the regulation of domestic greenhouse gas emissions is the endangerment finding EPA issued in 2009. Various states, local governments, and environmental organizations challenged EPA's decision to deny their petition requesting EPA to regulate emissions from new motor vehicles. EPA denied the petition, asserting that GHG emissions

were not "air pollutants" as that term is used under section 202(a) of the Clean Air Act, and that EPA had no statutory authority to regulate them. The U.S. Supreme Court disagreed.

In *Massachusetts v. EPA*, the Court held that GHGs are air pollutants as defined in the Clean Air Act and that EPA must regulate GHGs if in EPA's judgment they cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. The Court concluded that EPA's action was arbitrary and capricious because EPA offered no reasoned explanation for its refusal to decide whether GHGs cause or contribute to climate change.

Following the *Massachusetts* decision, EPA found that six GHGs endanger public health (the "endangerment finding"). This finding served as a basis for regulating GHG emissions from new motor vehicles and engines. Similar findings have supported regulating GHG emissions from power plants and certain other stationary sources, although those regulations have at times not survived judicial review.

To implement President Trump's Executive Order, "Unleashing American Energy," on August 1, 2025, EPA published a proposed regulation to rescind the endangerment finding and repeal GHG emission standards for new motor vehicles and engines on the basis, among others, that it has no authority to regulate these emissions. EPA asserts that new vehicle emissions do not "cause or contribute to air pollution" because the contribution of each class of motor vehicles to total GHG emissions is too small to endanger public health directly through local or regional exposures.

Faced with the *Massachusetts* decision, EPA contends subsequent Supreme Court decisions restraining agency authority under the "major questions" doctrine and delegating to courts authority to supply the best reading of statutory terms justify EPA's proposal. Considering

that *Massachusetts* was decided by a 5-4 vote of the Justices, and that three of the dissenting Justices remain on the Court, EPA's argument has a chance of prevailing.

EPA further contends that a May 2025 report issued by scientists chosen by the Department of Energy and other studies demonstrate that climate science is too uncertain to support the endangerment finding. Yet strong contrary evidence exists. EPA's arguments regarding recent Supreme Court caselaw likely present greater risk to proponents of the endangerment finding than does EPA's current view of the scientific uncertainties.

Ceasing to Gather Data

Establishing a legal basis for regulating greenhouse gases depends on marshaling support from sound science and reliable data. The Trump Administration has undercut several available tools. The Administration has paused or terminated preparation of the National Climate Assessment reports, even though they are Congressionally mandated. It has likewise restrained the participation of government scientists in reports developed by the Intergovernmental Panel on Climate Change which have predicted increased temperatures, higher sea levels and more extreme drought and flooding events. The Administration has also removed climate data from some government websites.

In the FY 2008 Consolidated Appropriations Act, Congress authorized funding for EPA to develop and publish a draft rule "to require mandatory reporting of GHG emissions above appropriate thresholds in all sectors of the economy of the United States." In 2009, the EPA adopted the final GHG Mandatory Reporting Rule. The Rule requires designated source categories, including many industrial sources, to report emissions of 25,000 metric tons of carbon dioxide, or its equivalent. This comprehensive national database provides information to

analyze GHG policies and programs, including developing emissions and new source performance standards.

Last month, EPA proposed to eliminate the GHG reporting requirements on the grounds that reporting is unnecessary. The proposal asserts that the Clean Air Act does not authorize the existing rule because EPA may only impose reporting obligations that have a close nexus to an underlying statutory purpose. EPA argues that it does not intend to use the data for rulemaking and therefore may not require its submission. EPA alternatively argues that it has discretion not to seek the information. If adopted, the recission will eliminate an important source of emissions data.

The economic effects of dismantling our nation's green economy are already apparent. Major renewable energy generation and retrofit projects are being abandoned or delayed, electric vehicle manufacturing programs are undergoing revision, and consumer plans to install solar panels and energy efficient systems and appliances are being curtailed. But perhaps of greater significance is diminution of technological innovation and capacity to manufacture green energy products and infrastructure. Federal policy to continue our reliance on fossil fuels leaves China and other nations to occupy the field while the domestic and global effects of climate change accumulate. We can do better.

*Kenneth J. Warren is a founding partner of Warren Environmental Counsel LLC and has been practicing environmental law for more than 35 years. He is a past president of the American College of Environmental Lawyers and is a former chair of the American Bar Association Section of Environment, Energy and Resources, where he led the Section's 10,000 members. He can be reached at kwarren@warrenenvcounsel.com.