**ESSAY**

# Climate Abundance or Environmental Democracy? A Concrete Proposal for Achieving Both

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## INTRODUCTION

In January 2025, as Donald Trump strode back into the White House for a triumphal second tour, publishers were racing to release two new books by self-described liberals with advice on how to fix what ails America and the American left—*Abundance* by journalists Ezra Klein and Derek Thompson and *Why Nothing Works* by political historian Marc Dunkelman.[1] These authors posit that public-spirited reformers from the last century have effectively handcuffed today's progressive policy innovations under a mountain of "paperwork and procedure and hearings and disclosure demands and lawsuits."[2] If we hope to unleash transformative climate solutions and decarbonize our economy, they argue, we must unshackle energy and other infrastructure projects from the outdated "good government" notions of the mid-twentieth century.

Recognizing that the political economy of their critique is "fraught," Klein and Thompson decline to offer more specific prescriptions; theirs is a "lens" through which to view contemporary policy challenges, not a "list of policy ideas."

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[1] Ezra Klein & Derek Thompson, ABUNDANCE (Avid Reader Press 2025); Marc J. Dunkelman, WHY NOTHING WORKS (Public Affairs 2025). These authors were not the only, or even the first, to advance this thesis. As far back as 2013, Hoover Institution scholar Francis Fukuyama coined the term "vetocracy" to explain his belief that "[t]he decision system has become too porous—too democratic—for its own good, giving too many actors the means to stifle adjustments in public policy." Francis Fukuyama, *The Decay of American Political Institutions*, 9 THE AM. INTEREST 3 (Dec. 8, 2013), https://www.the-american-interest.com/2013/12/08/the-decay-of-american-political-institutions/. Klein and Thompson themselves drew on Michigan Law Professor Nicholas Bagley's earlier article expressing a similar critique. *See* Nicholas Bagley, *The Procedural Fetish*, 118 Mich. L. Rev. 345 (2019). The title of Professor Bagley's forthcoming book, WHY WE CAN'T HAVE NICE THINGS: HOW LEGAL REFORMERS ACCIDENTALLY BROKE AMERICAN, promises more to come. *See* https://wwnorton.com/books/9781324106296 (preorder website describing author's argument "that American's obsessively legalistic approach to governance—our "procedure fetish"—has strangled progress"). And in 2021, Yale historian Paul Sabin jumped into the conversation with publication of his book PUBLIC CITIZENS: THE ATTACK ON BIG GOVERNMENT AND THE REMAKING OF AMERICAN LIBERALISM (W.W. Norton 2021) (developing the argument that reformers like Rachel Carson, Ralph Nader, and public interest environmental lawyers succeeded in building a legalistic movement that undermined the post-World War II alliance between government, business, and labor and ultimately ushered in Reagan-era conservatives).

[2] Klein & Thompson, *supra* note 1, at 90.

Dunkelman is a bit more forthcoming. At the close of *Why Nothing Works*, he concedes that "[a] government that operates expeditiously—a public authority with fewer guardrails—will inevitably be utilized not only to serve progressive desires but to pursue conservative ends as well."[3] Nevertheless, he says, "that's a risk progressives today need to take, a bargain they need to accept."[4]

This Essay explores how that bargain is working out so far for climate policy advocates and at-risk communities under the Trump Administration. Spoiler alert: Not well. Even as the Administration strips environmental laws of their procedural safeguards and intentionally scuttles renewable energy projects,[5] the President is using his expansive—and expanding—executive powers to expedite old-fashioned oil, gas, and coal development.[6] That effort is aided and abetted by the U.S. Supreme Court's evolving separation-of-powers jurisprudence. And many politicians from across the political spectrum are rushing to jump on the "community input is bad"[7] bandwagon with proposed legislative reforms that promise, in some cases, to largely disenfranchise community voices. All of this as developers hover nearby, ready to pounce with shovel-ready data centers and fossil fuel projects.

Almost certainly, this is not what the proponents of "Abundance liberalism" had in mind as they cross-pollinated ideas during the Biden Administration, when climate policy was on the ascendency. But no matter. Even in the face of today's

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[3] Dunkelman, *supra* note 1, at 332.

[4] *Id.*

[5] While some renewable energy projects persist, the Trump Administration has gone to extraordinary lengths to hobble new wind and solar projects, using raw executive power to paralyze permitting, claw back subsidies, buy out previously granted approvals, and otherwise stall out hundreds of projects. *See, e.g.*, Brad Plumer and Rebecca F. Elliot, *A Trump "Blockade" Is Stalling Hundreds of Wind and Solar Projects Nationwide*, N.Y. TIMES (Feb. 4, 2026); Austin Corona, *The Pentagon is blocking more than 150 wind projects over drone fears*, CANARY MEDIA (July 16, 2026); Jennifer McDermott, *Trump administration will buy back company's offshore wind leases off 3 states in a $1.2B deal*, ASSOCIATED PRESS (Aug. 6, 2026) (noting that the Administration adopted this buyout strategy after federal courts thwarted its efforts to halt wind development through unilateral executive action); Hayley Smith, *Another offshore wind developer exists California in $1.22-billion deal with Trump administration*, L.A. TIMES (Aug. 6, 2026)(describing most recent Trump Administration buyout of offshore wind leases in New York, Louisiana, and California—the fifth and largest such buyout in 2026 "in an unprecedented effort to steer companies away from offshore wind and into fossil fuel projects").

[6] For example, the Department of Interior is surging permits for new oil and gas development on public lands, *see* Ian M. Stevenson, *Oil and gas drilling permits surge 55% under Trump*, E&ENEWS (Jan. 12, 2026), ordering aging, expensive, polluting coal plants to keep operating, *see* Ethan Howland, *DOE orders 446-MW Colorado coal unit to keep running*, UTILITY DIVE, (Jan. 6, 2026), and pledging to invest hundreds of millions of dollars in existing and new coal facilities, *see* Jeff St. John, *The coal industry gave Trump a wish list. He's checking items off it.*, CANARY MEDIA (July 29, 2026).

[7] Jerusalem Demsas, *Community Input Is Bad, Actually*, THE ATLANTIC (Apr. 22, 2022).

startling policy reversals, many advocates continue to insist that "abundance policy"—shedding regulatory obstacles that stand in the way of "building things again"—is "best . . . pursued through an elite and interest group driven approach," rather than a "populist" program.[8] Apparently, then, the prescription for what ails the nation is to reign in "environmental democracy"—public transparency, citizen participation, and government accountability—from the top down. But isn't such a centralized, elite-driven approach precisely what landed us in the current right-of-center populist moment?[9] And isn't it exactly the strategy that President Trump is using today to silence dissenters and eviscerate climate policy?[10]

Despite a provocative shared narrative, the mushrooming Abundance movement has not cohered around an actual path forward for progressives – unlike traditional corporate interests, which are only too happy to embrace an agenda that shreds half a century of environmental democracy. Law professor Eric Biber, in his recent six-part blog post on "The Path to Abundance," concedes that "community input into government decisionmaking" is "quite popular in the United States," and that "Abundance reforms will pose difficult tradeoffs, including with environmental goals and public participation."[11] Yet he opines that such trade-offs "may be well worth it," even as he fails to provide a single concrete idea for how to make those trade-offs in a modern-day democracy, especially one that is tipping toward authoritarianism.[12] Historian Dunkelman is equally vague, suggesting only that progressives must find "a proper balance" between their conflicting Hamiltonian and Jeffersonian impulses.[13]

Spinning up catchy labels and sweeping critiques is one thing—especially when it sells books—but the hard work of balancing, or rebalancing, these competing impulses is quite another. Academics and public intellectuals who seek

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[8] Eric Biber, *The Path to Abundance: The Legal, Policy, and Political Challenges of an Abundance Agenda*, 50 WM. & MARY ENV'T L. & POL'Y REV. 205, 209, 238 (2026). Not all Abundance proponents are quite so direct. Professor Bagley, for instance, asserts that "America has wrongly elevated procedures and courts at the expense of politics and agencies" and theorizes that if only we foster "more democratic churn" and let "democracy rip," we can reduce artificial scarcity and build the future paradise we all crave. Nicholas Bagley, *Abundance and the Supreme Court*, 2025 THE SUPREME COURT REV. 211, 215-16 (2026). By "letting democracy rip," however, he means less judicial power and more executive power, not greater voices for affected communities. *See* discussion, *infra* note 30.

[9] *See, e.g.*, Sabin, *supra* note 1.

[10] https://ballotpedia.org/Donald_Trump%27s_executive_orders_on_energy_and_the_environment,_2025-2026 (listing over 25 sweeping executive orders rolling back environmental and clean energy requirements between January 20, 2025 and the present).

[11] Eric Biber, *The Path to Abundance, Part III*, LEGAL PLANET (Mar. 31, 2026), https://legal-planet.org/2026/03/31/the-path-to-abundance-part-iii/.

[12] *Id.*

[13] Dunkelman, *supra* note 1, at 23.

to break the hold of hard-won procedural safeguards but do not offer a democracy-oriented replacement are little more than enablers of the ongoing rule-of-law destruction, as the Trump Administration and an ultraconservative Supreme Court majority hasten to take America back to the future. Indeed, less than two years in, we are already well along the path on that retrograde journey.[14]

In his thoughtful article *What's Left of Environmental Democracy?*, published partway through the frenetic first year of President Trump's second term, legal scholar Wyatt Sassman makes a good start at wrestling with the hard question that most Abundance writers avoid—how to make forward progress without throwing participatory democracy under the bus?[15] This Essay aims to build on that foundation. It looks first at where environmental law and climate policy stand today, amid all the turbulence, and where we are likely headed. Next, it questions the received wisdom of Abundance purveyors that environmental review and permitting is our greatest barrier to progress and finds it wanting. Finally, it draws on recent social science research to suggest how we might take the first steps toward an alternative way forward.

## I. The Emerging Abundance Reality

Abundance advocates are united around one core tenet: We must reverse course on the "adversarial legalism" that took root in the 1960s and 1970s to spur enforcement of environmental and consumer protection laws.[16] But those formal legal rules at which the Abundance agenda takes aim lie at the heart of what Professor Sassman accurately calls "environmental democracy"—requirements for government transparency through publication of proposed rules and decisions, public participation through notice-and-comment or similar processes, and agency accountability through judicial review.[17] To be fair, the architects of Abundance do not outwardly "condemn all procedures,"[18] but the key twentieth century innovations of transparency, participation, and accountability are the very processes they decry as standing in the way of a dreamy future. If only we can clear away those well-intentioned but now-misguided obstacles, the *Abundance* authors tell us, we could step into a paradise where our kitchen faucets pour out fresh, clean water produced from desalination plants (so no need to dewater our streams and

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[14] *See* Kevin Bogardus et al., *Trump plans rollbacks as rules agenda piles high*, GREENWIRE (July 6, 2026) (providing details on how "President Donald Trump has laid out his wide-ranging regulatory plans to sweep away regulations and bolster American industry and fossil fuel energy"); UCLA Law, *Legal experts say rule of law has hit its lowest point in a decade* (May 20, 2026), https://law.ucla.edu/news/legal-experts-say-rule-law-has-hit-its-lowest-point-decade.

[15] Wyatt Sassman, *What's Left of Environmental Democracy?*, 49 HARV. ENVTL. L. REV. 462 (2025).

[16] *See* Bagley, *supra* note 1, at 349-50 (borrowing from Robert Kagan's book ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW 9 (2001)).

[17] *See* Sassman, *supra* note 15, at 469.

[18] Bagley, *supra* note 8, at 216.

rivers), our refrigerators are filled with fresh fruits and vegetables grown locally in non-polluting horizontal greenhouses (so no need to contaminate and despoil millions of acres with fertilizers and pesticides), and our decarbonized economy purrs along as we enjoy clear air, rewilded lands, and door-to-door drone deliveries to satisfy our wants and needs.[19]

Over the last 18 months, President Trump has arguably been doing precisely what Abundance reformers prescribe—systematically eviscerating federal environmental permitting processes through unilateral executive orders and fast-tracked administrative changes.[20] The Administration has, for instance, effectively gutted most procedural aspects of the nation's bedrock environmental disclosure law, the National Environmental Policy Act (NEPA)—a law that the courts have said is "purely procedural."[21] It has attempted to defang the Endangered Species Act by limiting agency review and permitting requirements to those rare projects that will intentionally kill individual animals, thereby giving developers carte blanche to destroy the habitat on which imperiled species depend with virtually no regulatory oversight.[22] The President's reconstituted Environmental Protection Agency is poised to eliminate procedural permitting requirements and substantive protection for the nation's increasingly scarce wetlands – and with it, the flood control, erosion, ecological, and climate benefits they provide.[23] Most recently, the Trump Administration has revealed its intention to roll back public participation

[19] Klein & Thompson, *supra* note 1, at 1-3.

[20] *See, e.g.*, Columbia Law School, Sabin Center for Climate Change Law, *Climate Backtracker*, https://climate.law.columbia.edu/content/climate-backtracker; New York University Law School, Institute for Policy Integrity, *Tracking the Damages of Regulatory Rollbacks*, https://policyintegrity.org/tracking-regulatory-rollbacks; Natural Resources Defense Council, *White House Watch: Tracking Attacks on Our Environment & Health*, https://www.nrdc.org/resources/white-house-watch-tracking-attacks-our-environment-health (documenting 530 actions since January 2025).

[21] *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 173 (2025). The subsequent wholesale rewriting of the NEPA implementing regulations by the current administration is discussed further below, *infra* note 55.

[22] *Rescinding the Definition of "Harm" Under the Endangered Species Act*, 91 Fed. Reg. 43,300 (July 14, 2026) (deleting "harm" from the regulatory definition of "take"—previously upheld by the U.S. Supreme Court in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995)—and effectively embracing Justice Scalia's dissent in that case that "take" means only actions "directed immediately and intentionally against a particular animal," *id*. at 720).

[23] *Updated Definition of "Waters of the United States,"* 90 Fed. Reg. 52,498 (Nov. 20, 2025) (proposing to limit Clean Water Act jurisdiction and permitting over many wetlands by redefining "waters of the United States" to mean permanent, standing, or continuously flowing bodies of water—such as streams, oceans, rivers, and lakes—and wetlands that are connected and indistinguishable from such waterbodies).

and tribal consultation for historic properties and culturally significant landscapes in service of unleashing new energy development.[24]

These efforts will likely get a substantial assist from the U.S. Supreme Court's recent embrace of a robust "unitary executive" theory. In arguably the most consequential administrative law decision of the 2025-26 term, the Court held in *Trump v. Slaughter* that Congress cannot restrict the President's ability to fire commissioners of independent watchdog agencies like the Federal Trade Commission, the Federal Energy Regulatory Commission, and the Consumer Product Safety Commission.[25] Although *Slaughter* concerns Presidential removal authority, its implications are much broader.[26] As Justice Gorsuch pointed out in his concurrence, Congress "has delegated extensive lawmaking and adjudicative functions" to these agencies, in the belief that they retained some modicum of independence from the President; the *Slaughter* decision thus "carries weighty consequences" because it portends a world in which Presidents have unlimited control over the exercise of every discretionary action.[27]

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[24] The National Conference of State Historic Preservation Officers, *The End of Section 106 as We Know It?* (July 20, 2026), https://ncshpo.org/2026/07/20/the-end-of-section-106-as-we-know-it/; *see also* Advisory Council on Historic Preservation, *ACHP Votes to Move Forward with Notice of Proposed Rulemaking* (July 24, 2026), https://www.achp.gov/news/achp-votes-move-forward-notice-proposed-rulemaking.

[25] *Trump v. Slaughter*, Case No. 25-332, 609 U.S. ___, 2026 WL 1855612 (June 29, 2026) (overruling *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and holding unconstitutional the provision of the Federal Trade Commission Act of 1914 that allows Presidential removal of a Commission only for "inefficiency, neglect of duty, or malfeasance in office"). Many other newer statutes creating independent agencies have used the same language, relying on the Court's upholding of that FTCA provision in *Humphrey's Executor*. *See, e.g.*, 42 U.S.C. § 7171 (allowing Presidential removal of FERC commissioners only for "inefficiency, neglect of duty, or malfeasance in office"); 15 U.S. § 2053 (allowing Presidential removal of Commissioners "for neglect of duty or malfeasance in office but for no other cause"). Presumably, all of these statutory restrictions are now unenforceable.

[26] While *Slaughter* is the most recent manifestation of this emergent jurisprudence, it is not the first. In *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 762 (2025), for instance, the Court acknowledged that "[t]he prerogative of at-will removal of a subordinate, then, often carries with it the power to supervise and direct that subordinate." And in an earlier case that foreshadowed *Slaughter*, the Court held unconstitutional another statutory provision limiting Presidential removal of the Consumer Financial Protection Bureau's director to "inefficiency, neglect of duty, or malfeasance in office." *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197 (2020). There, the Court once again reached back to the Framers' intent to explain that our constitutional scheme makes all executive officers "subject to the ongoing supervision and control of the elected President" whose oversight and unconstrained removal authority preserves "the chain of dependence." *Id.* at 225.

[27] *Slaughter*, 2026 WL 1855612, *26 (Gorusch, J., concurring). Justice Gorsuch is plainly sowing the seeds for the next step in his judicial enterprise—to reign in what he perceives as overly broad congressional delegations of power. *Id.* at 28 ("It was this Court that sat by while Congress delegated vast legislative and judicial powers to one independent agency after another. And it is this Court that today allows the President to remove those agencies' leaders and exercise effective control

For now, agencies exercising such expansive presidential discretion remain subject to judicial review for consistency with constitutional and statutory requirements, but the Supreme Court's recent decision in *Seven County Infrastructure Coalition* suggests that agency actions will be given a wide berth by the courts, at least in cases involving environmental laws like NEPA.[28] That case, which addressed the scope of an environmental review prepared for a railroad line extension to facilitate oil drilling in a remote Utah valley, can be boiled down to a single sentence in Justice Kavanaugh's majority opinion: "The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference."[29] Unitary executive control combined with muscular judicial deference to agency decisions opens the door for administrative officials to do the very thing that many Abundance advocates urge—shed public participation and democracy-enhancing safeguards built into the regulatory process over the last half century, so long as the underlying statute does not expressly mandate them. Professor Bagley, for one, enthusiastically embraces this prospect, suggesting that these judicial developments may form the seeds of a new "law of abundance" which affords "the President greater managerial control over the administrative state" even as it adopts "a more deferential approach to judicial review of executive branch action."[30]

Not to be left out of the party, Congress is considering its own proposals to streamline environmental permitting and eliminate public participation. In December 2025, the House of Representatives passed, on a "bipartisan" vote, the Standardizing Permitting and Expediting Economic Development (or SPEED) Act.[31] Building on *Seven County*, the bill would, among other things: (i) tighten the scope of NEPA environmental review; (ii) exclude federal funding from NEPA's applicability unless a federal agency has "complete control and responsibility" over the funded activity; (iii) impose additional deadlines for completion of environmental documents; (iv) reduce the statute of limitations for judicial challenge from six years to five months, (v) dictate deadlines for judicial resolution

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over all their powers. If the task of fixing a problem belongs to those who made it, this Court has some work to do.").

[28] *See Seven County, supra* note 21.

[29] 605 U.S. at 185. The Court held that the federal agency need not consider either the upstream impacts (from oil drilling that would not otherwise occur) or the downstream impacts (from rail hauling crude oil to the Gulf coast for refining) from the project. Justice Kavanaugh hammered the deference lesson, using the word ten times in a relatively short opinion, to drive home the point that courts will give agency policy decisions a light touch, even as they afford little or no deference to an agency's legal interpretation of statutes. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), and reversing 40 years of substantial deference to agencies on questions of legal interpretation).

[30] Bagley, *supra* note 8, at 212-13 (expressing cautious optimism that further judicial development of these ideas "would be good for the Court and good for the country").

[31] H.R. 4776, 119th Cong. (2025-26). The bill passed the House with 221 votes, including 210 from Republicans and 11 from Democrats.

of claims; (vi) bar judicial claims challenging an agency's decision to use a "categorical exemption" to avoid any environment review; and (vii) prohibit courts from vacating or enjoining action where they find legally defective NEPA compliance.[32]

While many of these Abundance-type reforms seem reasonable, the last two are sleepers that could effectively disembowel NEPA. First, because the statute is "purely procedural" and intended to inform agency decisionmaking, its only real teeth—and the primary incentive for agencies and developers to comply—is the threat that a project may be held up when a court finds the environmental review legally defective. If courts can neither vacate nor enjoin the underlying agency action when the NEPA analysis is inadequate, remand to the agency to remedy the flaws serves no purpose whatsoever because the decision is already made and can go forward. Second, if executive agencies have the unilateral authority to declare a project or action "categorically exempt" with no judicial consequence, they will have little incentive to do anything else.

Both the SPEED Act and its companion, the Promoting Efficient Review for Modern Infrastructure Today (or PERMIT) Act—a House bill passed at the same time, on the same vote, to roll back the scope of the Clean Water Act along the lines that the Trump Administration is also proposing through regulation[33]—are awaiting action in the Senate and under active consideration, as are a number of other environmental permitting reform efforts.[34] As negotiations across the aisle reportedly proceed, the Abundance dialogue has given conservatives an opening to deregulate fossil fuel and other environmentally impactful projects. For example, Wyoming Senator Barrasso has introduced the Let America Build Act,[35] which in his own words, "reforms National Environmental Policy Act (NEPA) judicial reviews for coal, oil, and gas projects; reduces federal regulations on oil, gas, and coal permitting; provides deference to state oversight; and streamlines federal reviews."[36]

## II. The (Weak) Case For Rewiring Environmental Democracy

It is not yet clear where all of this political churn will deliver us, but one thing has become quite apparent: The Abundance agenda has caught the imagination of all three branches of government, as well on many on both the left

[32] *Id.*, https://www.congress.gov/bill/119th-congress/house-bill/4776/text.

[33] H.R. 3898, 119th Cong. (2025-26), https://www.congress.gov/bill/119th-congress/house-bill/3898/text.

[34] See Influence Map, 2025-2026 Permitting Reform Legislation website, https://us.influencemap.org/policy/2025-Permitting-Reform-Legislation-15985.

[35] S. 4765, 119th Cong. (2025-26), https://www.congress.gov/bill/119th-congress/senate-bill/4765/text.

[36] News Release, *Barrasso Introduces Permitting Reform Legislation* (June 16, 2026), https://www.barrasso.senate.gov/barrasso-introduces-permitting-reform-legislation/.

and right.[37] Particularly striking is the gusto with which some federal jurists have taken up the cause. Just one week after *Seven County,* the D.C. Circuit Court of Appeal decided *Appalachian Voices v. FERC*.[38] That case, like *Seven County*, involved a fossil fuel project—this time, a natural gas pipeline rather than an oil train—and the court's narrow task was to pass on the adequacy of the agency' NEPA compliance. Applying its existing precedent, the court easily concluded that NEPA did not require the Federal Energy Regulatory Commission to undertake additional environmental review when it extended the completion deadline for a previously approved project.

But Judge Henderson saw fit to pen a 28-page concurrence—longer than the majority opinion—that began by excoriating the legal process:

> America was once a nation that built. In just over a year, we erected the world's tallest building: the Empire State Building. Between 1915 and 1925, we doubled the percentage of U.S. homes with electrical service, from 20 to 40 per cent. By 1940, we doubled those figures again. But that progress has subsequently ground to a halt. Since 1970, productivity growth in the construction industry has been on an unyielding decline. Our power grid has become bottlenecked. We have more pipelines in service today that were built pre-1970 than in the fifty-five years since. The sources of our slowdown are myriad. But one driving factor of our national sclerosis has been lawsuits such as this one.[39]

In the next paragraph, she excoriated the lawyers, again without reference to a shred of actual supporting evidence:

> Petitioners—a collection of environmental groups—have developed a cottage industry that uses the nation's environmental laws to retard new development. Petitioners deluge permitting agencies with dubious claims. The agencies spend years writing thousands of pages

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[37] Of course, there is also plenty of principled resistance from the left. *See, e.g.*, Sandeep Vaheesan, *The Real Path to Abundance*, BOSTON REVIEW (May 22, 2025), https://www.bostonreview.net/articles/the-real-path-to-abundance/; Tony Dutzik, *The problems of "Abundance,"* FRONTIER GROUP (Mar. 20, 2025), https://frontiergroup.org/articles/the-problems-of-abundance/; Elizabeth Wilkins, *On Abundance: Where We Agree, Where We Disagree, and How to Move Forward*, ROOSEVELT INSTITUTE (Mar. 26, 2025), https://rooseveltinstitute.org/blog/on-abundance-and-how-to-move-forward/; Hannah Story Brown, *An Abundance of Credulity*, THE AMERICAN PROSPECT (Mar. 26, 2025), https://prospect.org/2025/03/26/2025-03-26-abundance-of-credulity-klein-thompson-dunkelman-review/; Timothy Noah, *The Gaping Hole in the Center of the Abundance Agenda*, THE NEW REPUBLIC (Mar. 31, 2025); https://newrepublic.com/article/193346/economic-inequality-keynes-abundance-agenda.

[38] *Appalachian Voices v. Federal Energy Regulatory Comm'n*, 139 F.4th 903 (D.C. Cir. 2025).

[39] *Id.* at 916 (Henderson, J., concurring).

> of environmental review in an attempt to stave off litigation. Often, however, no sooner do agencies approve new development than they find themselves under a tidal wave of litigation from environmental groups. These groups do not need to win their lawsuits. Indeed, they rarely do. Yet they emerge victorious because delay is the coin of the realm. Developers—overwhelmed by the torrent of challenges—often abandon their projects rather than weather the storm. Many more are cowed from even entering the market.[40]

So, at least in the fossil fuel context, judges have begun to etch the Abundance narrative into the pages of the Federal Reporter. But is that narrative accurate? Before we decide to radically transform the central pillars of environmental democracy in a rush to "let American build again," it is worth interrogating the causal question: Does environmental democracy—and, in particular, NEPA—stand as the greatest obstacle to a future of abundance and prosperity?[41] Fortunately, over the last several years, a handful of academics have tried to answer this question through empirical research and analysis, rather than by mere anecdote. To skip to the punchline: The evidence so far does not support Judge Henderson's invective.

In 2018, legal scholars David Adelman and Robert Glicksman published an empirical study comparing NEPA litigation during the George W. Bush and Barack Obama Administrations; they found that "on average fewer than 100 NEPA cases are filed in district court annually" and concluded that only "[a] tiny fraction of environmental reviews under NEPA therefore either require detailed EISs or are

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[40] *Id.* Ironically, during the term immediately preceding the *Seven County* decision, the Supreme Court decided *Ohio v. EPA*, 603 U.S. 279 (2024), a challenge by three states to EPA's "good neighbor" policy for ozone pollution under the Clean Air Act. After the D.C. Circuit declined to stay the rule, the challenging states sought and obtained an emergency stay from the Supreme Court on its "shadow docket." In the majority opinion, Justice Gorsuch zeroed in on EPA's response to state comments, among more than 100,00 public comments altogether, expressing concern about how the policy would work if it turned out that not all states were included in a federal implementation plan. *Id.* at 287. In granting an emergency stay of the rule, the Court concluded that challengers were likely to succeed on their "arbitrary and capricious" claim because EPA's response did not adequately address the state comment before the policy was finalized. *Id.* at 297 & n.11 (also rejecting EPA's more extensive post-rule explanation as beyond the administrative record). In her dissenting opinion, Justice Barrett explained in detail how EPA did, in fact, respond to these concerns. *Id.* at 314-18. It thus appears that the increasingly conservative federal courts are happy to fly-spec the record when they disagree with an agency's decision, but afford maximum deference when they are not troubled by the outcome of the administrative process.

[41] The Abundance scholars offer little in the way of actual evidence. A few have filled books with anecdotes of how government projects slowed to a crawl or took years more to complete than did similarly ambitious projects in 1950—or better still, 1900. But such comparisons make no sense. Back then, with less than half (or, in 1900, less than a quarter) of today's population, that world was a quite different place; there were many fewer people who could be harmed and many fewer still who had any voice in their own future. Indeed, we bulldozed ahead with little thought for injury to communities or workers or the planet. Environmental democracy was the antidote.

subject to judicial challenges that have the potential to cause significant delays in federal programs."[42] Based on this analysis, the authors concluded that (1) the data "negate much of the conventional wisdom promoted by critics of NEPA"; (2) "the vast majority of agencies' decisions that have the potential to significantly impact the environment require only perfunctory review under CEs or relatively streamlined reviews under EAs; in comparison, the number of EISs prepared is tiny and has been gradually declining over the last decade or so"; and (3) given that only 100 NEPA cases are filed each year while roughly 100,000 federal actions are potentially subject to NEPA, "litigation rates are exceedingly low."[43]

The following year, legal scholar John Ruple and grad student Kayla Race published one of the largest empirical studies of NEPA to date, evaluating 1,499 federal court cases spanning 13 years between 2001 and 2013.[44] Their analysis found that less than one percent of NEPA-triggering projects resulted in preparation of an EIS, that the number of EISs has been declining over time, and that only 1 in 450 NEPA decisions are litigated.[45] A subsequent more detailed analysis, evaluating the level of NEPA review across various federal agencies, confirmed the same result: "NEPA appears to be working better than many believe, with roughly 99% of all NEPA decisions already being 'streamlined' to avoid the most rigorous analysis contained in an EIS."[46]

The most recent empirical scholarship is focused on environmental permitting specifically for renewable energy projects, presumably to test the wide-spread narrative that existing laws and regulations inhibit climate policy and clean

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[42] David E. Adelman & Robert L. Glicksman, *Presidential and Judicial Politics in Environmental Litigation*, 50 ARIZ. ST. L. J. 3, 7 (2018) ("We find little evidence that litigation under NEPA is out of control or that NEPA processes are overly burdensome. To the contrary, environmental reviews and procedures conducted under NEPA are typically circumscribed and rarely challenges. Roughly 99% of the many thousands of federal action with potentially significant environmental impacts are covered either by categorical exclusions to NEPA procedures or by environmental assessments [rather than environmental impacts statements].").

[43] *Id*. at 50. The NEPA boogeyman is a full environmental impact statement (EIS), which can run hundreds of pages, although 2023 statutory amendments capped the size of EISs at 150 pages (or 300 pages for projects of extraordinary complexity). 42 U.S.C. § 4336a(e). Where a project is not likely to have a significant environmental effect, the agency may prepare a truncated environmental assessment (EA), and where a project falls into a category of projects that generally will not have any significant environmental effects, the agency can avoid NEPA review altogether by invoking a categorical exclusion (CEs).

[44] John Ruple and Kayla Race, *Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases*, 50 ENVTL. L. 479 (2020).

[45] *Id.*

[46] John Ruple & Heather Tanana, *Chapter 10 NEPA at 50: An Empirical Analysis of NEPA in the Courts*, 66 RMMLF-INST 10 (July 2020), available in pre-publication draft at https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1236&context=scholarship.

energy development.[47] Professor Adelman examined data on environmental permitting for renewable energy projects between 2010 and 2021 and found that very few involved an EIS under NEPA, wetlands permits under the Clean Water Act (CWA), or habitat conservation plans and incidental take permits under the the Endangered Species Act (ESA).[48] For example, of the 1,132 solar projects in the dataset, only 36 (3.2 percent) completed an EIS and even fewer involved CWA or ESA permits; moreover, the overall rate of litigation for these projects was less than one percent.[49] Based on these data, the author concluded that "the most important observation is that EISs are rarely required," that the CWA "has had an insignificant impact on the development of wind and solar projects," and that the number of projects requiring ESA permits "is strikingly low."[50]

Legal scholar Anna Mance has also picked up this thread, evaluating a dataset of 2,009 cases that challenged federal environmental review under NEPA between 2009 and 2023. Professor Mance found that only 79 of these cases—or roughly four percent—involved clean energy projects and that "most NEPA cases are against projects involving forestry and fossil fuels.[51] From a climate perspective, limiting public participation in such forestry and fossil fuel case could actually lock in further carbon emissions.[52] Moreover, "only a slim fraction" of all NEPA cases in the dataset were delayed by restraining orders or preliminary injunctions, challenging the narrative that NEPA litigation is a primary barrier to project completion.[53]

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[47] *See, e.g.*, J.B. Ruhl & James Salzman, *The Greens' Dilemma: Building Tomorrow's Climate Infrastructure Today*,73 EMORY L.J. 1, 2 (2023); Michael B. Gerrard, *A Time for Triage*, 39 ENV'T F. 38, 40 (2022).

[48] David E. Adelman, *Permitting Reform's False Choice*, 51 ECOLOGY L. Q. 129, 148 (2024).

[49] *Id.* Notably, most of these projects affected historical tribal lands and all of them were located in ecologically sensitive environments. *Id.* at 153-54.

[50] *Id.* at 154-55.

[51] Anna Mance, *The Real Story of NEPA Litigation in Clean Energy Permitting*, 56 SETON HALL L. REV., 557, 565-66 (2025).

[52] *Id.*

[53] *Id.* at 566. While, as Professor Mance acknowledges, it is undoubtedly true in particular instances that litigation—or even just the threat of litigation—may delay particular projects, the empirical evidence simply does not support the most vociferous claims by both developers and liberal Abundance enthusiasts that NEPA litigation is a key driver in killing clean energy projects. The alternative narrative, and the congressional motivation behind NEPA, is that the threat of litigation incentivizes developers and agencies to consider and address a project' potential adverse effects so as to minimize viable litigation over the project. The fact that front-end activities like engaging consultants, drafting meaningful environmental analyses, and allowing public participation adds time and expense to project permitting is a feature of, not a flaw in, the process in a democratic society. The trick is to find the right balance between expediency and democracy.

Notwithstanding the reality reflected in these studies,[54] the Trump Administration acted swiftly after coming into office to strip the NEPA process of every requirement that is not nailed down in statute; these radical revisions to NEPA implementing regulations effectively leave the public in the dark for most projects until the agency issues a final approval decision.[55] If the President's wholesale dismantling of NEPA's procedural sideboards stands the test of time (and the courts), the public will need to find another way to meaningfully engage in the project review and decision process.[56]

And NEPA is hardly the only environmental law potentially triggered by federal project approvals. The alphabet soup includes: the Endangered Species Act (ESA), the Clean Water Act (CWA), the Clean Air Act (CAA), the National Historic Preservation Act (NHPA), the Federal Land Management and Policy Act (FLPMA), the National Forest Management Act (NFMA), and literally dozens of other more obscure statutes. At least a few of these will almost always be in play for a federally approved project. For instance, a solar project (or an oil pipeline) proposed on public land in the Mojave Desert will require compliance, at a minimum, with NEPA and FLPMA, but also potentially the ESA, NHPA, and possibly several other laws

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[54] Older and more limited analyses of NEPA implementation support the general conclusions reached in recent empirical studies. *See* Scott Hudson, *The National Environmental Policy Act: An Argument Against Repeal or Legislative Reform*, 53 ENVTL. L. 541 (2023) (discussing earlier Government Accountability Office report and other studies showing overwhelming use of categorical exclusions to comply with NEPA and infrequency of NEPA litigation). While Abundance proponents continue to cite anecdotal stories about individual projects, they have not provided actual empirical research to support their NEPA narrative.

[55] A little over a month into the second Trump term, the White House Council on Environmental Quality issued an immediately effective "interim final rule" to entirely rescind the uniform NEPA regulations, adopted during the Carter Administration to standardize implementation of the law, that had governed all federal agencies since 1978. 90 Fed. Reg. 10,610 (Feb. 25, 2025). That action was made final earlier this year. 91 Fed. Reg. 618 (Jan. 8, 2026). In their place, individual agencies either promulgated their own NEPA rules or adopted NEPA guidance to be implemented on a case-by-case basis, but all of these new NEPA procedures share critical features, including the elimination of any public participation that is not strictly required by the underlying statute. Now, agencies only issue a notice of intent to prepare a NEPA document when they determine at the outset that an environmental impact statement is legally required; where agencies decide instead to invoke a "categorical exception"—now quite liberally construed to cover many or maybe most projects—or to prepare only a more limited environmental assessment, they will not inform the public in advance, will not allow public scoping, and will not circulate a draft environmental analysis for review and comment. When the agency intends to prepare an environmental impact statement, it may choose to circulate a draft for public review or exercise discretion not to do so; in the latter case, the public becomes aware of the project and the results of the NEPA process only after environmental review is completed and posted on the agency's website. *See, e.g.*, 7 C.F.R. Part 1.7b (U.S. Department of Agriculture NEPA regulations); 91 Fed. Reg. 8738 (Feb. 24, 2026) (U.S. Department of the Interior NEPA guidance).

[56] *See, e.g.*, Marc Levitt, *The NEPA Everyone Is Arguing About Doesn't Exist Anymore*, THE BREAKTHROUGH INSTITUTE (Apr. 6, 2026) ("The legal and institutional framework that once guaranteed meaningful public engagement has been dismantled. In its place is a system defined by discretion, inconsistency, and uncertainty.").

depending on the resources involved—including the Federal Power Act for interconnection to the grid (or the Hazardous Liquid Pipeline Safety Act for an oil pipeline). Unlike NEPA, many of these statutes have permitting processes and public participation requirements woven into their fabric, making it harder for administrative agencies to unilaterally shed them through regulatory changes or executive orders, although the Trump Administration is pushing the envelope wherever it can.[57]

Congress could get to work rewriting and trying to harmonize all of these disparate laws and regulations. Or we could try something else.

## III. Environmental Democracy for the Twenty-First Century

The word so often used by Abundance liberals is "balance": We need to balance—or rebalance—the trade-offs between efficiency and democracy. But if environmental permitting is not the only, or even the greatest, source of infrastructure delay,[58] legislative (or regulatory) amendments that gut public

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[57] For instance, in April 2026, the NAACP sued xAI under the citizen suit provisions of the Clean Air Act for operating more than two dozen gas turbine units powering a new data center in Mississippi without the required Title V air permits. *See* https://naacp.org/sites/default/files/documents/1%20-%20Complaint.pdf. In June, the U.S. Department of Justice moved to intervene in the case for the express purpose of seeking dismissal of the citizen suit. The motion argues that because the U.S. exercised its "prosecutorial discretion" to "forego" enforcement of the Clean Air Act against this particular (Elon Musk-affiliated) facility, citizen actions are precluded from enforcing statutory violations—the very reason that Congress created citizen suit authority in the first place. *See* https://www.justice.gov/opa/media/1446141/dl?inline. Although the law allows such "overfiling" of citizen suits by the federal government where it wants to control the course of the litigation, the Trump Administration's use of this mechanism to entirely negate statutorily authorized citizen suits is unprecedented.

[58] As Professor Mance explains, many barriers can impede clean energy infrastructure development, including economic and market forces (financing, investment conditions, etc.), procurement rules, partisan opposition that creates legislative backlash in the form local or state bans on renewable energy projects, insufficient agency capacity to process permits, interconnection bottlenecks, etc. *See* Mance, *supra* note 51, at 571-72. For example, while Klein and Thompson proffer that environmental permitting is the singular cause behind the frustrating and seemingly endless delay in building California's proposed high-speed rail line, *supra* note 1, at 75-76, the actual story is quite different. While there were early lawsuits by disgruntled communities along the proposed route, those actions were resolved, most of them years ago, in the state's favor. And yet the project remains stalled, mostly due to poor planning decisions, massive cost overruns, absence of standardization, and lack of government and private capacity to complete a project of this magnitude. *See, e.g.*, David William Rosales, *Why California High-Speed Rial is Over Budget and Delayed – And What We Should Do About It* (Feb. 25, 2025), https://davidwilliamrosales.com/ 2025/02/26/california-high-speed-rail-problems/; Eric Goldwyn et al., *How to Improve Domestic High-Speed Rail Project Delivery*, NYU Marron Institute of Urban Management, Transit Costs Project, https://transitcosts.com/wp-content/uploads/HSR_Final_Report.pdf. Notably, the last lawsuit filed and subsequently settled, by the City of Millbrae, made clear that the dispute was not over building the project, but about local control over how the new rail line will integrate with other local transit services. *See* Holly Rusch, *Millbrae, California High-Speed Rail Authority reach settlement*, San Mateo Daily Journal (Apr. 18, 2025), https://www.smdailyjournal.com/news/local/ millbrae-

transparency, citizen participation, and government accountability are not likely to yield a balance that actually works. To the contrary, such changes are more likely to feed the anti-elite alienation that animates today's partisan populist impulses. But let's stipulate that our somewhat creaky federal administrative law structure could use some fine-tuning to meet the exigencies of the twenty-first century. What might an updated and streamlined environmental permitting process look like, consistent with the most basic principles of democracy?

This query brings us back to Professor Sassman's spirited defense of environmental democracy. To start, he largely shares the Abundance critique that environmental law went off the rails when elite professionals and public interest organizations prioritized lawsuits, lawyers, and legal strategies.[59] But that's where the alignment ends. The Abundance agenda urges reform that would disempower public interest lawyers and their perceived "not-in-my-backyard" (NIMBY)[60] clients in favor of returning stronger control to centralized agency experts who can then make more expeditious and efficient permitting decisions. Coming at the problem from an environmental justice perspective, Professor Sassman reaches just the opposite conclusion—we should give *more voice* to ordinary people and local communities. Abundance advocates would likely be horrified by that approach.

But Professor Sassman is onto something. A central feature of today's political dysfunction is the extreme policy whiplash we have experienced over the last two decades, as the nation careens from one presidential administration to the next with less and less congressional oversight. This dynamic undermines durable

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california-high-speed-rail-authority-reach-settlement/article_b7d8291d-f2ab-4576-91ff-cd2f2edbb0d2.html. Such lawsuits could well be avoided where project proponents engage early and work more collaboratively with local communities. *See* discussion, *supra* notes 64-79.

[59] Sassman, *supra* note 15, at 466.

[60] Many Abundance proponents, Ezra Klein included, got their start marinating in California's "yes-in-my-backyard" (YIMBY) movement, a supply side theory of change that took on the pathologies of the housing crisis that has now spread across urban America. Unsurprisingly, developers and the tech industry have aligned closely with the YIMBY movement, but its merits remain hotly debated on the left. *See, e.g.,* Patrick Range McDonald, *Inside Game: California YIMBY, Scott Wiener, and Big Tech's Troubling Housing Push*, HOUSING IS A HUMAN RIGHT (Jan. 13, 2020), https://www.housingisa humanright.org/inside-game-california-yimby-scott-wiener-and-big-tech-troubling-housing-push/; Michael Friedrich, *The Case Against YIMBYism*, THE NEW REPUBLIC (Mar. 15, 2024), https://newrepublic.com/article/ 179147/case-against-yimbyism-yimbytown-2024; Dick Platkin, *Does "Critique of YIMBY Economics" Get Things Right?*, LAPROGRESSIVE (Sept. 23, 2023), https://www.laprogressive.criticqcom/los-angeles-2/critique-of-yimby-economics; Tim Redmond, *New study by Fed economists directly contradicts Yimby narrative on housing prices*, 48HILLS (Mar. 27, 2025), https://48hills.org/2025/03/new-study-by-fed-economists-directly-contradicts-yimby-narrative-on-housing-prices/. Unlike more typical large infrastructure projects, housing development reflects a unique set of local social dynamics that have little or nothing to do with NEPA or other federal environmental permitting. Accordingly, YIMBY prescriptions, whatever their merit, should not drive federal environmental law and permitting reform.

climate policy and inevitably hinders private clean energy investment.[61] Drawing from left-leaning scholarship on social movement theory and collective ownership as an alternative to concentrated private economic power, Professor Sassman offers a normative vision for rethinking the public's role in these policy debates. The twin cornerstones of his vision are (1) community benefit-sharing and (2) reformed participatory procedures that are "authoritative, contested, mobilizing, and decisive."[62]

This theoretical framework offers an intriguing alternative to the Abundance solution of diluting environmental democracy's core principles through blunt legislative or regulatory rollbacks of existing law. To put some meat on the bones, imagine a more democratically-oriented legislative proposal for permitting reform—for fun, let's call it the "Substitute Procedures for Efficiency and Environmental Democracy" (or SPEED) Act—that applies to a defined set of "infrastructure" projects requiring federal approval.[63] The SPEED Act would layer on top of existing statutes, rather than amending or displacing them, and provide a substitute process that balances democracy and efficiency. Here's the basic idea:

> (1) A private project developer could opt into the substitute process by (a) commissioning an independent, objective analysis of the project's potential ecological, social, and health impacts before triggering the process, which would then serve as the informational foundation on which to engage the community; (b) participating in a structured and open community engagement process for a fixed period of time (e.g., six months, subject to extension); and (c) entering into a negotiated community benefits agreement to mitigate project impacts and address public concerns.
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> 2) During the structured engagement period, a professionally trained mediator would serve as a neutral convenor and referee, facilitating the flow of information between participants, ensuring that negotiations proceed in an expeditious and orderly manner, and certifying good faith participation. One key distinction from private mediation is that the process would be open and transparent, rather than confidential.
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> 3) Upon conclusion of the engagement period, the project application would receive priority processing by federal permitting agencies and, if necessary,

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[61] *See, e.g.*, Sonal C. Patel, *Decarbonization Whiplash Prompts Power Sector Recalibration*, POWER (June 11, 2025), https://www.powermag.com/decarbonization-whiplash-prompts-a-power-sector-recalibration/.

[62] Sassman, *supra* note 15, at 509 (drawing heavily on the scholarship K. Sabeel Rahman).

[63] Climate advocates might want to define and limit "infrastructure" to wind and solar developments, new electricity transmission facilities, and similar projects. Industry would surely want to include pipelines, data centers, and similar projects. To pass legislation, Congress undoubtedly would need to reach a compromise, but "infrastructure" does not, and should not, include extraction of natural resources (mining, logging, drilling for oil, etc.).

fast-tracked judicial review, which would only be available to those who participated in the mediated permitting process. Federal agencies would retain their duty to ensure that the project impacts analysis is legally adequate under existing laws (NEPA, ESA, CWA, etc.), but certified compliance with the substitute procedure would displace certain statutory or regulatory public processes, such as the requirement to make draft environmental documents available for comment and to respond to those comments.

In essence, a project proponent who engages in a good faith effort to work with interested members of the affected public would move to the front of the line for federal permitting purposes, avoid some of the more time-consuming and increasingly meaningless public comment processes, and reduce uncertainty in the event of litigation. Developers would be motivated to work with, rather than against, the community, potentially modifying aspects of the project in response to concerns expressed by participants—the original goal of NEPA—and sharing some of the project's financial rewards through community benefit agreements. For the community (individuals, environmental groups, labor organizations, local officials, etc.), the substitute procedure would create an opportunity for more meaningful engagement than today's routine notice-and-comment and administrative appeals provide. And those who participate in the substitute process would not forego their ability to challenge the project in court if agreement cannot be reached, although the scope and length of judicial review would be reduced. In this way, all parties are incentivized to engage and find an acceptable outcome.

The concept of a mediated public permitting process draws from the growing social science research literature around community trust-building and conflict resolution.[64] Much of the recent work in the climate space focuses on facilitating effective governance in the face of partisan and institutional divides.[65] The relevant scholarly literature has concluded, time and again, that public trust in institutional actors (governments, private sector, and nonprofits) is critical to successful and durable environmental governance and climate policies.[66] Among climate skeptics, in particular, trust is highest in "friends and family" and "people like me," suggesting that successful project siting in resistant communities is best achieved

[64] The concept of public policy mediation is not new, of course. *See, e.g.*, David Laws & John Forester, *Public Policy Mediation: From Argument to Collaboration*, in HANDBOOK OF PUBLIC POLICY ANALYSIS 513-36 (Frank Fischer et al., eds., CRC Press 2007). But it has never been formally incorporated into the legal regime that governs federal environmental permitting.

[65] *See, e.g.*, Alexander Gazmararian & Dustin Tingley, UNCERTAIN FUTURES (Cambridge Univ. Press 2023) (describing how history of broken promises has led to lack of community trust around climate policies and arguing that building credibility from the ground up is the way to overcome impasse).

[66] *See, e.g.*, Jeonghwa Yang et al., *Understanding Climate Policy Support: Public Concern, Institutional Trust, and Political Ideology in the United States*, 107 SOC. SCI. Q. e70147, https://onlinelibrary.wiley.com/doi/epdf/10.1111/ssqu.70147 (in-depth literature review).

by engaging trusted lay networks of peers and community leaders.[67] In other words, "[e]fforts to engage skeptical audiences will likely be more successful when messages are delivered by people who are relatable, value-aligned, and free from perceived vested interests."[68]

Community skeptics have been able to effectively mobilize local (and sometimes state) resistance to clean energy projects that are seen as having widely distributed benefits but locally concentrated costs—in the form of noise, visual pollution, ecological damage, health and safety impacts, and the like.[69] Research suggests that acceptance of such additional community burdens is contingent on whether institutional actors are perceived as "competent, fair, and trustworthy"[70] and whether decisionmaking processes are perceived as "inclusive, participatory, and responsive to community knowledge."[71] Based on survey data from Austin, Texas, for example, Yang et al. concluded that:

> Governance arrangements that elevate citizen voice and enable co-production tend to generate stronger legitimacy and broader policy acceptance. Governments, in turn, can enhance legitimacy through transparent, inclusive, and procedurally fair decision-making processes. Communication strategies that emphasize local benefits, shared values, and fairness are likely to reduce ideological resistance, particularly among conservative constituencies. Leveraging trusted intermediaries such as nonprofits, community leaders, and faith-based organizations would further strengthen support across partisan divides.[72]

These conclusions, drawn more generally from the behavioral science literature, are borne out by recent environmental case studies around the globe.[73]

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[67] Sarah MacInnes et al., *Who do we trust on climate change, and why?*, 96 GLOB. ENVTL. CHANGE 103096 (2026), https://www.sciencedirect.com/science/article/pii/S0959378025001335?via%3Dihub.

[68] *Id.* at 9.

[69] *See* Matthew Eisenson, *Opposition to Renewable Energy Facilities in the United States: May 2023 Edition*, Columbia Law School, Sabin Center for Climate Change Law (May 2023), https://scholarship.law.columbia.edu/sabin_climate_change/200/; Dan McCarthy, *Chart: State lawmakers introduced a tone of anti-renewable bills this year*, CANARY MEDIA (Sept. 5, 2025), https://www.canarymedia.com/articles/policy-regulation/anti-renewables-state-legislation-2025.

[70] Yang et al., *supra* note 65, at 3 (citing, inter alia, Margaret Levi & Laura Stoker, *Public Trust and Trustworthiness*, 3 ANN. REV. POL. SCI. 475 (2000), https://www.annualreviews.org/content/journals/10.1146/ annurev.polisci.3.1.475).

[71] *Id.* at 13.

[72] *Id.*

[73] *See, e.g.,* John Pickering et al., *Building trust in the energy transition: an approach based on behavioral science*, 6 ENERGY AND CLIMATE CHANGE 100217 (2025), https://doi.org/10.1016/j.egycc.2025.100217 (New York); Jie Sun et al., *Mitigating local opposition in renewable energy projects expansion: Evidence from Denmark*, 257 RENEWABLE ENERGY 124902 (2026),

Perhaps most interesting from a U.S. climate policy perspective is a recent study by Pickering et al. that targeted community perception and resistance to utility-scale solar in rural Upstate New York, using mixed social science methods. Consistent with much existing literature, the researchers found that local resistance is rarely about the technology itself, but rather arises when "communities perceive a loss of control over land use, a mismatch between development incentives and local needs, or a lack of clear and accessible information."[74] Notably, they concluded that top-down strategies, such as attempts by developers or government agencies to inform communities about project benefits, "are largely ineffective in gaining the community's buy-in and may even exacerbate resistance, due to a lack of trust and negative perceptions of governing authorities."[75] Instead, community buy-in depends on "early, genuine engagement that prioritizes understanding the (1) factors that shape community perspectives toward adoption, (2) concerns that local communities have about such developments, and (3) what can be done to [help] communities capture any benefits available to them from the proposed development."[76]

Our alternative SPEED Act addresses these social science findings in concrete ways. The use of a trained mediator to facilitate the substitute process comports with Pickering et al.'s "step one" suggestion to appoint a skilled "facilitator of engagement," with no vested interest in the development itself or renewable policies generally, who will be responsible for building relationships, navigating power dynamics, and supporting inclusive, community-led processes.[77] Also "essential" to the process is "structured engagement" in the decision process whereby the developer invests time in direct interactions with a broad swath of key community stakeholders. Such robust engagement goes far "beyond simply providing opportunities for feedback" to ensure that the voices of the community are heard and to build the kind of trust that is vital to securing buy-in.[78] For energy developers and community leaders, Pickering et al. conclude that the path to successful project development involves "partnerships grounded in trust, transparency, and mutual benefit," rather than "temporary or symbolic" engagement.[79]

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https://doi.org/10.1016/j.renene.2025.124902 (Denmark); Dominic McAfee et al., *Environmental solutions fast-tracked: Reversing public scepticism to public engagement*, 253 BIO. CONS. 108899 (2021), https://doi.org/10.1016/j.biocon.2020.108899 (Australia).

[74] Pickering et al., supra note 72, at 2.

[75] *Id.*

[76] *Id.*

[77] *Id.* at 3.

[78] *Id.* at 4-5.

[79] *Id.* at 5-6.

To these core social science-derived elements, the proposed SPEED Act adds a requirement that the project developer fund an independent socio-environmental analysis that will serve as the informational baseline for negotiations and mitigation/community benefits and, at the same time, can satisfy basic federal environmental law requirements. To gain community trust, it is critical to maintain the substance of the existing legal regime as the default backstop. A project developer who agrees to genuinely engage and respond to stakeholder concerns receives a significant degree of streamlining in return. A developer who elects not to engage the community in this robust way, or fails to do so in good faith, remains at the back of the permit line. In this way, skeptics driven by a history of distrust or ideological preference are empowered to try engagement and see what comes of it, without fear that the local community will become a sacrifice zone for elite policymakers and corporate entities.

Environmental democracy advocates are right to be anxious about backing away from the robust public participation processes that have been in place since the 1970s, but in reality, that battle is already lost. The Trump Administration, backed by the U.S. Supreme Court, has largely gutted NEPA and is working its way toward the same result for other environmental laws.[80] Indeed, many of the public participation processes that are so familiar to environmental lawyers are not actually enshrined in statute.[81] Even with a new, more sympathetic administration, it is quite unlikely that we will ever return to the heyday of public process. Moreover, where notice-and-comment or similar processes still exist, they can now be readily gamed to the detriment of environmental protection. For instance, when the South Coast Air Quality Management District in Los Angeles proposed new rules designed to protect public health but vehemently opposed by the natural gas industry, the agency received some 20,000 fake comments opposing the rules, submitted in the name of individuals who did not make them.[82] It seems an ideal time to experiment with a different approach to public engagement.

For now, the SPEED Act proposal, as conceptually articulated here, applies only to the federal permitting process for designated infrastructure projects; it does not directly address or attempt to override state and local laws that might also impede such development.[83] As such, it is likely to be most relevant to federal

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[80] *See* discussion, s*upra* notes 20-29 and 55-57.

[81] *See* Hazel Rosenblum-Sellers, *Good Cause for Goodness' Sake: A New Approach to Notice-and-Comment Rulemaking*, MICH. L.R. ONLINE (Oct. 2025).

[82] Haley Smith, *Southern California air board rejected pollution rules after flood of comments from Ai powered platform*, L.A. TIMES (Feb. 17, 2026), https://www.latimes.com/environment/story/2026-02-17/ai-powered-campaign-may-have-killed-key-vote-on-air-quality.

[83] If the SPEED Act concept is adopted and proves successful, the next step might be to reconsider the interaction between federal and state/local law. But policymakers should be wary of jumping too quickly to a federal preemption framework. Doing so is likely to play into growing populist discontent and, more than that, to defeat any gains achieved through meaningful community-based engagement.

projects or private projects on federal lands. Those could well include clean energy infrastructure like solar and wind farms, battery storage facilities, and transmission and distribution lines, but also new oil and gas drilling and associated pipelines. The latter is concerning, given the urgent need to avoid more capital investment and sunk costs in new fossil fuel infrastructure, but communities would be empowered to drive a better bargain than they can today. And a streamlined process that truly informs the community of the pros and cons associated with different types of energy development might not be one the fossil fuel industry elects to pursue.

While hardly perfect, the SPEED Act proposal provides a start. It offers tangible ideas for how policymakers might structure a politically palatable bargain that balances democracy and efficiency. It builds on a robust body of behavioral science and dispute resolution literature that seems increasingly relevant in the anti-elite populist moment. It arguably satisfies the call by Abundance proponents for "a voice but not a veto"[84] without undermining half a century of government transparency and accountability, however imperfect it has proven. Most of all, it contrasts starkly with the implicit assumption underlying the Abundance agenda—that radical permitting reform would somehow only benefit renewable energy projects and other cool stuff progressives want, like high-speed rail—an assumption that has turned out to be predictably but tragically wrong.

## CONCLUSION

After quietly bubbling through the academic backwaters for years, the concept of Abundance suddenly splashed across the national stage in 2025 with the publication of a best seller by that name. Since then, academics, judges, politicians, and public intellectuals of all stripes have clamored to embrace the Abundance agenda. Distilled to its essence, Abundance is shorthand for the idea that today's unmet social challenges (housing, clean energy, public transit, etc.) are largely the result of too much paperwork and process and public participation. To reach an idealized future of abundant good things, the thesis goes, progressives who favor government action should get on board the deregulation train that has been chugging along since the Reagan Administration.[85]

Missing from most of the burgeoning Abundance literature is any serious attempt to translate theory to practice in a way that does not merely intensify the wealth gap and feed the fire of popular discontent. This Essay takes a crack at the critical task of putting forward *concrete* ideas to address *real* obstacles that may impede forward progress. Those obstacles are not people who want a voice in the future of their communities or the pillars of environmental democracy that have

[84] Dunkelman, *supra* note 1, at 326.

[85] *See* Dean Preston, *The Abundance "Movement" is Trickle Down Repackaged* (Apr. 4, 2025), https://www.deanprestonsf.com/blog/abundance..

helped to make such voices heard. The real impediment to a future of plenty is the deeply entrenched belief that private corporate actors, distant government officials, and elite armchair intellectuals know best what communities need and want. Legal "reform" built on that belief is destined to backfire and end in ever-more-divisive political gridlock. Social science tells us loud and clear that the best path forward is genuine structured community engagement that facilitates trust, transparency, and mutual benefit. This Essay offers a modest first step in that direction.