

As Environmental Protection Agency Administrator Lee Zeldin rushes to rescind the endangerment finding — which some have called “the Holy Grail of U.S. climate policy” — the UCLA Emmett Institute hosted an expert panel discussion on the reasoning and ramifications of such a move.

The effort underlines “an extraordinarily dark time in U.S. environmental politics,” UCLA Law Professor **Ann Carlson** said during the webinar. “But all is not lost,” she added. If successful, the [proposal](#) to revoke the endangerment finding would “take the Clean Air Act off the board as a toolbox for climate policy, but it will not eliminate other tools,” **Joseph Goffman**, who held top EPA posts in the Obama and Biden administration, said during the webinar. The proposal is partly predicated on a recent Energy Department report that has been widely criticized for “ignoring”, “cherry-picking”, and “misrepresenting” scientific studies, UCLA climate scientist **Karen McKinnon** said during the panel.

So, what challenges lie ahead for the repeal effort and for federal and state climate policy? Read key highlights from their discussion, which was moderated by the Emmett Institute’s **Cara Horowitz**. These excerpts have been edited for brevity and clarity. You can watch the full recording above or [here](#).

Q: What is the endangerment finding and why is it important?

Ann Carlson: In order to understand the endangerment finding, we need to go back to *Massachusetts v. EPA*, that’s the decision that led to EPA regulating greenhouse gases. The court held in a 5-4 decision that greenhouse gases, like carbon dioxide, methane and others, are covered as air pollutants under the Clean Air Act. Another important question was whether the administrator of the Environmental Protection Agency was required to determine under the Clean Air Act whether those greenhouse gases endanger public health and welfare. And the court said yes. The agency evaluated the science and determined that in fact greenhouse gases endanger public health and welfare — and that the science and law were pretty clear that EPA needed to do something about that by regulating those pollutants.

Joe Goffman: This is a battle exclusively about what authority EPA has under the Clean Air Act and by extension prevailing case law. If the administration’s ambitions are entirely fulfilled to repeal, it’ll take the Clean Air Act off the board as a toolbox for climate policy, but it will not eliminate other tools.

Q: What's the Trump administration proposing to do, and what are its stated rationales for the proposal?

Joe Goffman: The soundtrack for what the administration is trying to do is Pink Floyd's "Another Brick in the Wall" because what the administration is assembling is what it hopes will be an impregnable wall against any future action to regulate greenhouse gases under the Clean Air Act. The proposal is a smorgasbord of arguments that either explicitly call on the Supreme Court to reverse *Massachusetts v. EPA* or set up 'significance' threshold tests in terms of the quantity of greenhouse gas emissions from the power sector or transportation sector that in any conception of the real world are un-meetable — so that the EPA's authority going forward to regulate either sector will not be viable for future administrations.

Q: Do any of the legal justifications seem particularly strong or particularly weak, do they surprise you at all?

Joe Goffman: A number of these arguments were made by the Bush administration in *Massachusetts v. EPA*, were undertaken by the Supreme Court and rejected. So what are they up to? I think they're luring the Supreme Court to either explicitly reverse *Massachusetts* or fatally disable the authority that the court identified.

Ann Carlson: It really is just a complete rehash of the dissenting opinions in *Massachusetts v. EPA* — nothing new except for the wholesale assault on the science which is more brazen. I think the bigger surprise is the question of why they are doing this. I think Joe has a good theory which is 'Let's get the federal government out of the business altogether of using the Clean Air Act; let's kneecap a future administration should there be one interested in regulating greenhouse gases.' But there are some consequences that may not be what industry wants. Having national regulation as opposed to state regulation is something industry clamors for all the time. To get the federal government out of the business of regulating — it sure seems like there is a vacuum opened up for states certainly on the power sector side, with oil and gas.

Q: Can you summarize the main scientific criticisms of

the Trump administration's stance? What is the administration getting wrong?

Karen McKinnon: A lot of my research is on heat waves and heat extremes, how they're changing under climate change. But the Energy Department report came out with these statements that actually greenhouse gas emissions have had little to no effect on heat waves. For almost anyone around the world who has experienced heat — but certainly those of us studying heat — that claim is clearly so wildly inaccurate. They did a custom analysis using relatively low-quality and nonrepresentative data to argue their point, and then basically ignored the giant body of published literature on heat waves that very clearly shows that increasing heat waves are linked to climate change. There was egregious cherry-picking: I wrote a paper on a major heat wave and they took one sentence from my paper that by itself made it seem like the heat wave was just due to weather, but if you included the prior sentence it was very clear that there were climate change components as well. That's just one anecdote that gets at why I can't summarize all the scientific concerns. But I think the broad themes were ignoring decades of scientific research, cherry-picking parts from studies, and in some cases just completely misrepresenting studies.

Q: What is still possible in a world without the endangerment finding when it comes to federal policy?

Joe Goffman: "The blunt-force politics until at least 2029 are all stacked against [climate] action. I think we're looking beyond the Clean Air Act toolbox and beyond the 2028 horizon.

Ann Carlson: There are of course other federal statutes that provide some opportunity to reduce greenhouse gases. One that is probably the most important is that the National Highway Traffic Safety Administration [NHTSA] retains the ability to regulate fuel economy and efficiency from heavy duty vehicles. If you want to talk about places where policy is important to continue to push technological innovation, the heavy-duty sector is one. The Federal Energy Regulatory Commission (FERC) has a lot of interesting power that could be utilized that's not affected by the Clean Air Act. We retain some tax incentives from the Inflation Reduction Act, including some for wind and solar in the short-term but also for geothermal and other sorts of zero-emission power sources — I don't think we should write those off. Energy efficiency standards remain, that law remains in effect and it's super important to be cutting energy through increasingly efficient appliances. So, there are a lot of tools — the Clean Air Act is the centerpiece, but it's by no means the only way to regulate, and that all remains in effect. So, all is not lost.

Q: What are the effects of this action on state power, particularly California's authority, including unintended consequences?

Ann Carlson: States are preempted from issuing vehicle standards, but they are not preempted from a whole host of other programs, like California's Cap-and-Invest program. We have limitations on stationary sources of pollution. Colorado has regulated methane. There is a regional cap-and-trade program in the Northeast. There are also a lot of financial investments that states are making — investments in EV charging infrastructure, which is really important as we try to push toward a clean transportation future; fleet investments in zero emission buses; incentives for heavy-duty trucks to be zero-emission. That's the baseline.

If the endangerment finding is repealed and that repeal is sustained, the first thing that could happen is we could see the undermining of a case called *American Electric Power Co. v. Connecticut*, that's a case that was issued a number of years ago to say that litigants could not bring federal common law nuisance cases to get emitters to cut their greenhouse gas emissions, because the Clean Air Act regulates greenhouse gases and therefore essentially occupies the field. If the endangerment finding presumably the rational for *American Electric Power v. Connecticut* is gone. I think that matters in a couple respects: There's an argument being made by the oil companies that these are federal issues, and states shouldn't be allowed to use state nuisance claims... I think it's also the case that some courts have found appealing the argument that states shouldn't be in the business of regulating something that crosses their borders.

A second issue is in these cases now involving state climate superfund statutes. The Justice Department has been trying to argue in a case challenging [Vermont's climate superfund law](#) that the case has to be struck down because the 2nd Circuit struck down a state common law nuisance case filed in federal court, but that 2nd Circuit case was based on *AEP vs. Connecticut*. The Justice Department is pretty vigorously going after these climate superfund statutes and here they're undermining themselves in court. If you read the case briefs you can see how they are dancing around the central question, which is that their own EPA is attempting to pull the rug out from under the rational in *AEP vs. Connecticut*.

And there's a third possibility that is probably more controversial, but I think is a very valid possibility. If Section 202 of the Clean Air Act doesn't cover greenhouse gases, then presumably states aren't preempted from regulating them. This is not a slam-dunk

argument, but it certainly is a strong enough argument that if I were a state and the endangerment finding disappeared, I would be evaluating the possibility that I as a state could regulate emissions from vehicles. I would be stunned if California isn't taking that argument into account. And that may be the single most-feared outcome by industry of repealing the endangerment finding. So, this could be a be-careful-what-you-wish-for moment.