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Examining the Role of AGs in a Just Transition

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PACE ENVIRONMENTAL LAW REVIEW

ARTICLE

Examining the Role of AGs in a Just Transition

BY BETHANY A. DAVIS NOLL[†] & TERRI GERSTEIN^{††}

ABSTRACT

Tackling the climate crisis requires transitioning from fossil fuel to clean energy, which will necessarily have a significant impact on jobs and the economy overall. The impact of this shift has sometimes been feared as a development that will be harmful to workers and the economy. Fossil fuel jobs are seen as good jobs--well-paid jobs with good benefits and protections--while the emerging clean energy industry has not yet uniformly embraced a high-road employment model. But workers' rights and environmental concerns are not fundamentally incompatible. There are many policies and tools that can be and are being harnessed to bring about a "just transition," ensuring that the emerging clean energy sector provides high quality jobs and that needs of current fossil fuel workers are also adequately addressed. These policies exist at the intersection of workers' rights and environmental policy.

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As the top lawyers in a state with a great deal of discretion for engagement and a wide range of tools at their disposal, attorneys general are in a unique position to engage at this intersection. To promote a just transition, AGs can enforce labor standards and worker protection laws in the emerging clean energy industry, in order to nip any nascent bad practices in the bud and establish a baseline industry norm and expectation of widespread compliance. They can advocate for the creation of quality jobs in the clean energy industry. They can take action to protect workers and the environment in bankruptcy proceedings. They can defend and promote state or federal-level rules protecting workers from dangerous heat. They can counsel their client agencies on clean energy projects so that there are strong worker protections in place. And they can critically examine the impact that any new project might have on communities that have been overburdened by pollution—among many more possibilities. This Article analyzes the factors that could lead AGs to decide to work to promote a just transition. The Article then surveys the many tools AGs have at hand for that work and provides a number of ideas for engagement for AGs in this space.

| | |
|--|-----|
| Abstract | 198 |
| Introduction..... | 200 |
| I. Factors for Attorney General Action | 204 |
| A. Harm to Constituents | 204 |
| B. Federal Inaction..... | 206 |
| C. Issues Affecting the Interests of Multiple States..... | 208 |
| D. Additional Factors | 209 |
| II. AG Tools | 211 |
| A. Enforcing Worker Protections | 211 |
| B. Policy and Advocacy | 215 |
| 1. Representing and Advising State Agencies..... | 215 |
| 2. Public Education | 216 |
| 3. Investigations and Other Soft Powers | 217 |
| 4. Legislative Advocacy and Litigation on Policy Issues | 218 |
| III. Potential for AG Action in the Just Transition Space | 220 |
| A. Defining “Just Transition” | 221 |
| B. Are the Incentives for AG Action Present? | 223 |
| 1. Limits and Opportunities | 224 |
| 2. Applying the Factors leading to AG involvement | 225 |
| a. Labor and Climate Issues Are Salient at the State Level | 226 |
| b. Federal Inaction in the Labor Space | 228 |

| | | |
|----|--|-----|
| c. | Limitations on Other Actors Who Might Address the Harm | 230 |
| d. | The Issues Affect Multiple States | 231 |
| e. | Opportunity for Lasting Impact | 232 |
| C. | Possibilities for AG Engagement | 233 |
| 1. | Pushing for Good Jobs in the Clean Energy Sector | 233 |
| a. | Unions | 233 |
| b. | Project Labor Agreements | 237 |
| c. | Prevailing Wage | 238 |
| d. | Labor and Safety Protections | 239 |
| e. | Defending State Agencies | 241 |
| 2. | A Just Transition Away from Fossil Fuel | 242 |
| a. | Law Enforcement | 242 |
| b. | Policy Advocacy and Public Education | 243 |
| c. | Bankruptcy-Related Advocacy | 244 |
| 3. | Protecting Workers Across Sectors | 249 |
| | Conclusion | 252 |

INTRODUCTION

Scholars of federalism have observed that the United States is undergoing an “era of state renaissance,” in which states have become propellers of national policy.¹ States have been leaders on issues when federal action is limited or inadequate, or when federal policy is seen as unacceptable.²

In exploring federalism, scholars have identified state Attorneys General (AGs) as key actors on the national stage, as well as within their states. AGs have played this role through the lawsuits and investigations that they bring, often driving more enforcement than the federal government does or exposing abusive practices when federal agencies have failed to act.³ AG lawsuits can have significant impacts on policy and industry practices. AGs have been described as “acting as de facto national policymakers,” with their lawsuits changing “the rules of the game.”⁴ When AGs begin to engage

1. Kathleen Ferraiolo, *State Policy Innovation and the Federalism Implications of Direct Democracy*, 38 *PUBLIUS* 488, 488 (2008).

2. *Id.* at 489.

3. Ernest A. Young, *A Research Agenda for Uncooperative Federalists*, 48 *TULSA L. REV.* 427, 447 (2013).

4. Alan Greenblatt, *How State AGs Became a Check on the President*, *GOVERNING* (Sept. 30, 2021), <https://www.governing.com/now/how-state-ags-became-a-check-on-the-president> [https://perma.cc/7EE3-AETA].

in a certain area or industry, they may continue their actions even if federal regulators also begin, or they may increase their focus, leading to the possibility of simultaneous enforcement from state and federal governments.⁵ In addition, AG prosecution can entail sizeable penalties and have the potential to cause a lasting impact across an industry.⁶

In years past, coalitions of AGs have faced off against the tobacco industry when no lawsuit had succeeded against the industry,⁷ garnered an 83% success rate against the Trump administration's vast flow of regulatory rollbacks and other policies,⁸ and pursued liability on the part of those responsible for the opioids crisis.⁹ States engaged on these varied issues for a number of reasons, including deep harms affecting constituents; insufficient or unlawful federal action; limitations constraining other actors that might seek to address the harm (such as private litigants, private industry, or other state actors); the multi-jurisdictional nature of the issues; and the unique ability of AGs, with broad powers and multi-faceted roles, to affect the issues and bring about lasting change.

Right now, one of the most significant challenges facing the nation and the world is the climate crisis. In a recent report, the Intergovernmental Panel on Climate Change and the United Nations reconfirmed that greenhouse gas concentrations in the atmosphere continue to rise, leading in recent decades to surface temperatures that are among the warmest on record and extreme weather events that have already caused catastrophic damage and unsafe working conditions.¹⁰

Regulators and lawmakers at the local, state, and federal levels are working to address the climate crisis by cutting greenhouse gas emissions, moving toward electrification and promoting clean transportation, and supporting new, cleaner electric generation, with the recently-passed Inflation Reduction Act of 2022 as a centerpiece of national efforts.¹¹ This work will

5. Ashley Taylor & Chris Carlson, *Your Company May Be a Likely Target of State Attorneys General. You May Not See It Coming*, CORP. COMPLIANCE INSIGHTS (Feb. 15, 2022), <https://www.corporatecomplianceinsights.com/target-state-attorneys-general-enforcement/> [https://perma.cc/WJH2-YEUV].

6. See generally Taylor & Carlson, *supra* note 5.

7. Jason Lynch, *Federalism, Separation of Powers, and the Role of State Attorneys General in Multistate Litigation*, 101 COLUM. L. REV. 1998, 2006 (2001).

8. BETHANY A. DAVIS NOLL ET AL., STATE ENERGY & ENV'T IMPACT CTR., *THE PROOF IS IN THE POLICIES: 2021 WINS* 32 (2021).

9. See generally Abbe R. Gluck & Elizabeth Chamblee Burch, *MDL Revolution*, 96 N.Y.U. L. REV. 1, 35 (2021).

10. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC], *SIXTH ASSESSMENT REPORT, WORKING GROUP III, CLIMATE CHANGE 2022: MITIGATION OF CLIMATE CHANGE* 9 (2022).

11. Inflation Reduction Act of 2022 (P.L. 117-169). See also, e.g., Adnan Durakovic, *New York to Hold 2+ GW Offshore Wind Auction in 2022, Invest USD 500 Million in Infrastructure*,

necessarily have a significant impact on jobs, as investment is moved from industry models that rely on fossil fuels (gas-powered cars, for example, or coal-power power plants) to new renewable-based models. This has led to concerns about the impact of the transition on workers: Many existing fossil fuel jobs provide employment with unionized workforces, family-sustaining wages, health insurance, and other benefits. Meanwhile, the emerging clean energy industry is not uniformly embracing a high-road employment model, for a variety of reasons, including overall poor working conditions and the general anti-union position of corporations in the United States, as well as concerns about the higher cost of well-paying jobs. Legislation proposed in Congress, the Protecting the Right to Organize Act, known as the PRO Act, would make it easier for workers to unionize and thereby greatly improve working conditions,¹² but congressional gridlock and the persistence of the Senate filibuster have prevented federal action on that bill.¹³

At the same time, concerns about workers have the potential to undermine efforts to address the climate crisis. Labor advocate Amanda Novello of The Century Foundation has argued that “the strength of the climate movement is tied directly to the strength of the labor movement: without strong workers’ rights and protections, it will be highly unlikely that a green transition will be as aggressive and wide-reaching as needed, in the time we have.”¹⁴ From a social and economic justice perspective, a transition to clean energy that replaces family-sustaining unionized jobs with low-road, exploitative ones would be deeply problematic. From a strategic perspective, both the labor and environmental movements stand to benefit by grappling with ways to join together in pursuit of common goals. Workers have an interest in continuing to have a habitable planet and in addressing climate change, especially as a growing number of workers are already devastatingly affected by rising temperatures and other climate-related events.

OFFSHORE WIND.BIZ (Jan. 6, 2022), <https://www.offshorewind.biz/2022/01/06/new-york-to-hold-2-gw-offshore-wind-auction-in-2022-invest-usd-500-million-in-infrastructure/> [<https://perma.cc/BJ4K-25JX>]; Press Release, The White House, Fact Sheet: The Bipartisan Infrastructure Deal Boosts Clean Energy Jobs, Strengthens Resilience, and Advances Environmental Justice (Nov. 8, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/08/fact-sheet-the-bipartisan-infrastructure-deal-boosts-clean-energy-jobs-strengthens-resilience-and-advances-environmental-justice/> [<https://perma.cc/W74L-ZUFG>].

12. See *infra* text accompanying notes 159–161.

13. Ian Kullgren, *Biden in Race Against Time, GOP to Overhaul Labor Law for Unions*, BLOOMBERG (Feb. 4, 2022), <https://news.bloomberglaw.com/daily-labor-report/biden-in-race-against-time-gop-to-overhaul-labor-law-for-unions> [<https://perma.cc/UTD3-TTP6>].

14. Amanda Novello, *Workers’ Rights in an Era of Climate Crisis: A Recap*, THE CENTURY FOUND. (Dec. 19, 2019), <https://tcf.org/content/commentary/workers-rights-era-climate-crisis-recap> [<https://perma.cc/XQX4-34TJ>].

Similarly, environmental advocates have an interest in building a broad-based and justice-oriented coalition that pushes the changes needed in an expeditious way.

This Article explores the potential role of AGs in helping drive a just transition from fossil fuels to clean energy sources. It analyzes the factors that generally lead to AG involvement in public advocacy issues, describes the tools available to AGs, and analyzes why and how state AGs could play a key role in just transition issues. The overall transition that will occur in response to climate change is likely to affect much more than just the energy sector. But this Article focuses on the energy sector as a way to examine the broader issues raised in this space where environmental and labor law intersect with state interests.

Many states have shown that they have a strong interest in addressing the climate crisis, as evidenced by numerous state commitments to reduce greenhouse gases and statutes that codify those commitments.¹⁵ Many of the statutes also set out goals for addressing the needs of workers in the fossil fuel sector.¹⁶ AGs serve as the top lawyer in each state and they have a wide range of powers and tools to address these issues: they advise and defend state agencies, pursue both labor and environmental policies that are in the best interests of the state's residents, file civil lawsuits and sometimes criminal charges to bring wrongdoers to account again in both the labor and environmental spheres among many others, and advocate for their constituents at the state and federal level.¹⁷ With these powers, AGs have the potential to have a marked impact in relation to an energy transition – addressing the climate crisis through advocacy for more protective state and federal policies, while also enforcing worker protections.

Given the power that AGs can potentially wield, it is useful to understand the factors that contribute to state AG intervention, and to understand the role that state AGs could play in relation to a just transition.

This Article proceeds as follows. Part I situates the role of AGs within the broader political system and explains the factors that have often contributed to their decisions to engage on a particular issue. Part II describes the tools that AGs possess, with an emphasis on the tools that could be most

15. See STATE ENERGY & ENV'T IMPACT CTR., FOLLOW THE LEADERS: STATES SET PATH TO ACCELERATE U.S. PROGRESS ON CLIMATE 4 (2021) (detailing climate commitments across multiple states).

16. See, e.g., COLO. REV. STAT. ANN. § 8-83 pt. 5 (West, 2022) (creating the created a Just Transition Office and a fund to implement the statute's provisions); 50 ILL. COMP. STAT. ANN. 65 (West, 2022) (creating several programs to protect and support displaced workers); N.Y. Env't Conserv. Law § 75-0103 (McKinney, 2022) (establishing a working group to study employment impacts and develop a plan to meet the law's just transition goals).

17. See *infra* notes 59–109 and accompanying text.

useful in protecting worker's rights during a transition. Part III applies those factors to the needs of a just transition in order to examine the rationale for AGs to engage in pushing for stronger and more just workplace policies as the energy economy shifts. Part III concludes with a number of recommendations for doing just that.

I. FACTORS FOR ATTORNEY GENERAL ACTION

AGs have a range of roles; they pursue litigation on behalf of their states and represent their states in litigation, issue legal opinions to clarify the law, provide legal advice to governors and state agencies.¹⁸ AGs also bring their own independent civil litigation and many also have authority to bring criminal prosecutions.¹⁹

Because of the powers that AGs wield and their position within the political system, they are often able to fill gaps where there is otherwise insufficient attention or resources to hold people, institutions, and corporations accountable. This ability has been especially relevant and pronounced when industries like the tobacco and opioid industries evaded accountability for massive, nation-wide harms. In those cases, several specific factors were at play, salient local harm to constituents, inaction at the federal level, and harms affecting more than one state. This Section discusses these factors, and outlines their role in leading to AG action.

A. Harm to Constituents

The primary factor that leads to AG involvement is when the problem affects or has the potential to adversely affect people living in their states, particularly in an ongoing way. AGs are state-level actors, and so their offices and resources are attuned to state-level harms, including the harms experienced by "their state's most vulnerable residents."²⁰ Additionally, a group that is in the minority nationally might constitute a majority or larger constituency in a particular state, incentivizing state-level actors like AGs to represent those groups' interests more forcefully at the national level.²¹

AGs also have duties to enforce state-level protections and statutes that are considered a priority for their states. For example, some AG offices

18. Jane R. Flanagan, *Alt-Enforcers: The Emergence of State Attorneys General As Workplace Rights Enforcers*, 95 CHI.-KENT L. REV. 103, 104–05 (2020).

19. Lynch, *supra* note 7, at 2002–03.

20. Flanagan, *supra* note 18.

21. Young, *supra* note 3, at 429.

in the west, such as Colorado²² and Utah,²³ have sections that focus extensively on water rights; the California AG's office has an Office of Immigrant Assistance and Immigrant Rights²⁴; and the Minnesota AG in 2021 initiated a "Fairness for Farmers" initiative.²⁵

AGs may also be more capable of identifying and prosecuting state-level actors. For example Michigan state AG Dana Nessel recently warned residents of Benton Harbor, Michigan about price gouging of bottled water; while price gouging and lead poisoning are salient for regulators and legislators at the federal level, they were particularly relevant in this instance because of specific localized concerns over lead-contaminated drinking water.²⁶ AGs regularly identify "scam alerts of the month" and they are often the primary actors in redressing consumer complaints.²⁷ For example, when a real estate company convinced New Yorkers to invest thousands of dollars in property located in the Dominican Republic but never gave the investors title to the property,²⁸ the New York AG filed suit and secured more than \$500,000 for dozens of victims who lost money.²⁹

Action to secure access for people with disabilities is another example of AG enforcement to protect state residents. New York's AG secured agreements with theatre companies to ensure accessible seating, and with stores to ensure that consumers reliant on service animals could enter without hassle.³⁰ The AG also pushed the Allegany County Board of Elections to ensure that its polling places were accessible to people with disabilities and

22. *Natural Resources & Environment*, ATT'Y GEN. STATE OF COL., <https://coag.gov/office-sections/natural-resources-environment/> [<https://perma.cc/8EV4-UMBD>].

23. *Natural Resources*, OFF. OF THE ATT'Y GEN. STATE OF UTAH, <https://www.attorneygeneral.utah.gov/about/dept/civil/nr/> [<https://perma.cc/8EGU-QMD8>].

24. *Office of Immigrant Assistance and Immigrant Rights*, STATE OF CALI. DEP'T OF JUST., https://oag.ca.gov/civil/sections/imm_assist [<https://perma.cc/WX5N-V225>].

25. Marshall, *Fairness for Farmers Initiative Seeks Stronger Enforcement of Antitrust Law*, KMRS/KKOK (Feb. 16, 2022), <https://kmrskkok.com/2022/02/16/fairness-for-farmers-initiative-seeks-stronger-enforcement-of-antitrust-laws> [<https://perma.cc/99T2-2VYH>].

26. Autumn Pitchure, *AG Nessel warns of water bottle price gouging in Benton Harbor*, (Oct 15, 2021), <https://www.wlns.com/news/local-news/ag-nessel-warns-of-water-bottle-price-gouging-in-benton-harbor> [<https://perma.cc/JGR8-JJUE>].

27. See generally *Consumer Protection*, NAT'L ASS'N OF ATT'YS GEN., <https://www.naag.org/issues/consumer-protection/> [<https://perma.cc/C9PT-ESTM>] ("[a]ttorneys general are a leading consumer protection force in the country . . .").

28. Press Release, Office of the Attorney General Press Release, A.G. Schneiderman Secures Over \$500,000 In Restitution and Title Certificates for Consumers Against Dominican Republic Real Estate Developer (Feb. 26, 2015), <https://ag.ny.gov/press-release/2015/ag-schneiderman-secures-over-500000-restitution-and-title-certificates-consumers> [<https://perma.cc/2MEW-9S4Z>].

29. *Id.*

30. Press Release, Office of the Attorney General, A.G. Schneiderman Announces Victories for Disability Rights On 23rd Anniversary Of Americans With Disabilities Act (July 26,

led public education seminars to spread awareness about the importance of following accessibility guidelines in various industries.³¹

As these examples demonstrate, AGs often take action when a harm is particularly salient within their states, adversely affecting constituents

B. Federal Inaction

Lack of federal action to address an urgent and dire issue can also lead to AG involvement. The “tyranny of the status quo” as Roderick Hill described it,³² can make federal policy change slow-going, even when fast-evolving circumstances demand fast-paced policy responses. Because of the Senate filibuster, a Senate rule which requires a super-majority of senators to pass most major laws, groups smaller than a majority can block federal legislation.³³ As a result, federal policies are unlikely to be able to keep up with the justice-focused demands of an energy transition.

Attorneys general are not similarly beholden to the tyranny of the status quo. Although forty-six attorneys general are elected,³⁴ and that brings its own electoral pressures, AG decisions to bring or decline to bring civil enforcement actions, to issue legal opinions, and to defend a state policy or agency in court are not reviewable by any other official (absent a court challenge).³⁵ In the states where an AG is elected,³⁶ the AG can generally take many actions independent of the governor, and when enforcing federal

3013), <https://ag.ny.gov/press-release/2013/ag-schneiderman-announces-victories-disability-rights-23rd-anniversary-americans> [<https://perma.cc/D5QD-8SK3>].

31. *Id.*

32. Roderick M. Hills, Jr., *Against Preemption: How Federalism Can Improve the National Legislative Process*, 82 N.Y.U. L. REV. 1, 13 (2007).

33. *See e.g., id.* at 53.

34. *See Who Are America’s Attorneys General?*, NAT’L ASS’N OF ATT’YS GEN., <https://www.naag.org/news-resources/research-data/who-are-americas-attorneys-general/> [<https://perma.cc/L7K5-Q5R3>]. The forty-six figure includes states, territories, and the District of Columbia.

35. *See* Attorney General’s Brief at 16, *In re John W. Hickenlooper*, No. 2015 SA 296 (Colo., Nov. 20, 2015) (arguing that the AG should have the power to sue the Governor and rebutting the assertion that checks on the AG would be missing by citing the possibility for judicial review).

36. *See* NAT’L ASS’N OF ATTORNEYS GEN., *supra* note 34.

statutes, the AG in most cases also acts independently from the state legislature.³⁷ Furthermore, in some instances, AGs “can enforce federal laws that the state legislature may not enact.”³⁸

To be sure, inaction at the federal level, whether because the executive refuses or fails to enforce federal laws or Congress refuses to pass them or fund enforcement, can put AGs “in a bind.”³⁹ Preemption may stand in the way of new state laws or restrict regulations, whether or not Congress has enacted a statute addressing the specific issue.⁴⁰ And while AGs can propose legislation in many states, either directly or by working closely with legislators, they cannot pass legislation. But AGs can enforce their states’ laws, which can be stricter than those at the national level, and they can interpret existing federal and state laws to support their enforcement actions often without coordination with any other government actor (contingent on acceptance of that interpretation by a federal or state judge, of course).⁴¹

When an issue urgently needs to be addressed and the federal government is not acting, there are numerous examples of instances when AGs have used their powers to enter the fray. Under President Reagan, for example, the number of staff at the Federal Trade Commission was reduced by half and the agency brought fewer than half of the cases it had under Reagan’s predecessor President Carter; in response, AGs began to increase their own enforcement of anti-trust and consumer protection laws.⁴² Another example: prior to the 1990s, the tobacco industry was considered untouchable and “wield[ed] significant clout in Congress.”⁴³ A bipartisan coalition of AGs took the industry on and in 1998, secured a \$206 billion

37. See William P. Marshall, *Break Up the Presidency? Governors, State Attorneys General, and Lessons from the Divided Executive*, 115 YALE L. J. 2446, 2448 n.3 (2006). Some conservative state legislatures have sought to limit their more progressive AGs’ powers in recent years. See, e.g., Lucille Sherman, *NC Governor Blocks GOP Attempt to Transfer Powers from Executive Branch to Legislature*, THE NEWS & OBSERVER (Sept. 27, 2021), <https://www.newsobserver.com/news/politics-government/article254389979.html> [<https://perma.cc/FUA5-6DN7>]; Beth LeBlanc, *GOP Moves to Dilute Power of Governor, AG, Secretary of State*, DETROIT NEWS (Nov. 29, 2018), <https://www.detroitnews.com/story/news/local/michigan/2018/11/29/bill-would-allow-legislators-intercede-any-court-case-involving-state/2150818002/> [<https://perma.cc/FU7X-7B6M>].

38. Eliza A. Lehner, Note, *Dissenting by Enforcing: Using State Consumer Protection Statutes to Enforce Federal Law*, 12 HARV. L. & POL’Y REV. 209, 221 (2018).

39. *Id.*

40. See *id.*

41. *Id.*

42. Lynch, *supra* note 7, at 2005.

43. *Id.* at 2006.

settlement against tobacco companies.⁴⁴ Forty-six AGs were part of the settlement agreement in that case.⁴⁵

C. Issues Affecting the Interests of Multiple States

An issue that has state-specific impact might also have impacts across states. In those circumstances, the incentives for an AG to become involved can rise, as states can partner with each other to magnify their influence and the scope of the change they can create, while also leveraging the economies of scale that collaboration and pooled resources can bring.

Multistate litigation began to grow in the 1980s as a way to tackle cases involving massive, well-resourced corporations that individual state AG offices could not readily handle solo.⁴⁶ By sharing resources and litigation costs, AG offices can exert more pressure on the businesses and entities they investigate and sue, together taking action that other offices, acting alone, might not be able to bring to bear.

For example, the AG victory against the tobacco industry “underscored how powerful state attorneys general had become when they worked together and drew national attention to their activities.”⁴⁷ States also banded together to address the opioid crisis. On July 21, 2021, attorneys general reached a \$26 million settlement with pharmaceutical distributors Amerisource Bergen, Cardinal Health, and McKesson, and manufacturer of prescription opioids Johnson & Johnson.⁴⁸ Forty-four states joined this settlement agreement.⁴⁹ In addition, in February 2021, forty-seven state attorneys general, along with Washington, D.C. and five territories, reached a \$573 million settlement with McKinsey & Company, a consulting firm that advised opioid companies and helped them promote the sale of opioids.⁵⁰

44. *Id.*

45. *Id.*

46. See Lynch, *supra* note 7, at 2003–04.

47. *Id.* at 2006.

48. *Opioids*, NAT’L ASS’N OF ATT’YS GEN., <https://www.naag.org/issues/opioids/> [https://perma.cc/6S26-4EWL].

49. Nate Raymond, *Most U.S. Local Governments Opt to Join \$26 Bln Opioid Settlement*, REUTERS (Jan. 26, 2022), <https://www.reuters.com/world/us/most-us-local-governments-opt-join-26-bln-opioid-settlement-2022-01-26/> [perma.cc/9375-YPBX]; see also Press Release, Governor of the State of Haw. David Y. Ige, Drug Distributors and Johnson & Johnson Commit to \$26 Billion Opioid Agreement with Hawai’i Expected to Receive Over \$73 Million to Fight the Opioid Crisis (Feb. 28, 2022), <https://governor.hawaii.gov/newsroom/ag-news-release-drug-distributors-and-johnson-johnson-commit-to-26-billion-opioid-agreement-with-hawaii-expected-to-receive-over-73-million-to-fight-the-opioid-crisis/> [https://perma.cc/8X4K-NEX2].

50. *Opioids*, *supra* note 48.

The funds recovered from both of these actions will primarily be used for opioid treatment and prevention.⁵¹ The opioids cases show AGs joining together to force accountability on corporations that have otherwise generally not faced sufficient regulatory or congressional pressure from the federal government.⁵²

D. Additional Factors

In addition to the above three factors, many other considerations drive AG decisions to engage on a given topic. In practice, determinations often result from an informal and not necessarily systematic mapping of multiple factors that together can point toward action. Other factors affecting these decisions include, for example, whether there are alternative means for redress by private litigants or other state agencies, and whether there is sustained advocacy by state-level stakeholders.

As with any government agency, AGs consider their own jurisdictional limitations and available resources. However, often AGs have broad jurisdictional authority under multiple different statutes that can be harnessed to protect their constituents. For example, the Illinois AG used legal theories such as fraud and discrimination to address worker exploitation. The California Attorney General brings labor-related cases under an unfair competition law. Other AGs have organized and drawn on resources within the private and public interest bars to address issues of importance; then-California AG Kamala Harris's office in 2015 convened a roundtable of law firms, immigrants' rights advocates, and others about the need for resources and legal aid for unaccompanied minors fleeing Central America. These efforts led to the legal representation of more children in immigration cases, as well as stronger relationships between immigrant-focused nonprofit organizations and law firms able to take on pro bono cases.⁵³ Along similar lines, the Massachusetts AG's office holds a monthly wage theft clinic for cases it cannot handle, with nonprofit organizations, pro bono lawyers,

51. *Id.*

52. Katie Zezima & Colby Itkowitz, *Flailing on Fentanyl*, WASH. POST. (Sept. 20, 2019), <https://www.washingtonpost.com/graphics/2019/investigations/fentanyl-epidemic-congress/> [<https://perma.cc/GZU8-9LQY>]; see, e.g., Katie Zezima, *Congressional Report: Drug Companies, DEA Failed to Stop Flow of Millions of Opioid Pills*, WASH. POST. (Dec. 19, 2018), https://www.washingtonpost.com/national/congressional-report-drug-companies-dea-failed-to-stop-flow-of-millions-of-opioid-pills/2018/12/18/5bc750ee-0300-11e9-b6a9-0aa5c2fcc9e4_story.html?noredirect=on [<https://perma.cc/C2CG-P2S8>].

53. Press Release, State of Cal. Dep't of Just., Attorney General Kamala D. Harris Convenes Immigration Advocates, Law Firms to Provide Legal Support to Children Seeking Refuge in the U.S. (Dec. 16, 2015), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-convenes-immigration-advocates-law-firms> [<https://perma.cc/R7FQ-4L97>].

legal services offices, lawyers who can take contingency cases, and more.⁵⁴ Faced with limited jurisdiction and resources, some AGs have sought additional jurisdiction and funding from the legislature in order to be able to address issues of importance to them. For example, Minnesota AG Keith Ellison sought and obtained both jurisdiction and resources for his office to address wage theft in his state.⁵⁵

In some cases, AGs may be motivated to act not just by federal inaction, but rather by federal action they understand to be adverse to their state's interest. When President Trump rolled back a slew of environmental rules, different coalitions of AGs sued the administration more than 40 times, ultimately garnering an 83% success rate.⁵⁶ (Conservative AGs also have taken this approach: When he was Oklahoma AG, Scott Pruitt sued EPA fourteen times, challenging its air emissions rules among other measures.)⁵⁷

In making decisions, an individual office-holder's values and risk tolerance also come into play, as well as their conception of the office (as careful steward or changemaker).

Moreover, in some instances, such as ensuring clean water or air, problems are inherently multi-jurisdictional and can ultimately be comprehensively solved only through federal action. In those circumstances, AGs will be incentivized to sue the administration for failing to promulgate strong rules or enforce them. In some areas, such as in relation to the minimum wage, even strong enforcement of federal laws would not obviate the need for state action, because many states have enacted minimum wages higher than the federal requirement.⁵⁸

Finally, and importantly, AGs often consider whether their involvement in an issue has the potential to lead to lasting impact in terms of industry practices and the future well-being of the people of their states.

* * *

54. *Free Wage Theft Legal Clinic*, COMMW. OF MASS., <https://www.mass.gov/service-details/free-wage-theft-legal-clinic> [<https://perma.cc/XWE2-5VXE>].

55. Minn. Stat. §§ 177.45, 181.1721 (2022).

56. JESSICA BELL ET AL., *THE PROOF IS IN THE POLICIES: 2021 WINS* app. (The State Energy & Environmental Impact Center, 2021), <https://stateimpactcenter.org/insights/the-proof-is-in-the-policies-2021-wins> [<https://perma.cc/6LPY-NE4V>].

57. See generally *Pruitt v. EPA, A Compilation of 14 Challenges of EPA Rules filed by the Oklahoma Attorney General*, N.Y. TIMES, <https://www.documentcloud.org/documents/3290872-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html> [<https://perma.cc/T42X-43ZJ>].

58. *State Minimum Wages*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 9, 2022), <https://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx> [<https://perma.cc/QR3U-6Q29>] (showing that 30 states and D.C. have minimum wages higher than the federal rate).

In summary, there are a range of considerations at play in relation to what drives AG decisions to engage on a particular issue. In all cases, existing or potential harm to constituents is generally the most reliable touchstone without which action is highly unlikely.

II. AG TOOLS

If a number of the above factors are present, the next question is whether AGs have the tools to engage. In the context of worker protections, many AGs have those tools. They have enforced existing law, including wage theft, misclassification and other worker protection laws, all of which could be enforced in the new clean energy economy. In addition, some AGs have worked to improve worker protection standards in the face of risks exacerbated by a changing climate, by for example pushing for improved safety standards at chemical plants that face higher risk of accidents due to extreme weather.⁵⁹ As the economic transition towards clean energy intensifies, there will be more opportunities to advocate for stronger environmental protections and labor protections in new projects. To provide background on AG tools relevant to just transition advocacy, this Part provides an overview of AG actions in the area of worker protection as well as in areas where environmental and worker protection overlap.

A. Enforcing Worker Protections

There has been “a significant uptick in the involvement of state attorneys general” in workers’ rights matters in recent years.⁶⁰ As the new clean energy economy begins ramping up and fossil fuels are phased out, AGs can play a key role in ensuring that companies in industries both new and old comply with worker protection laws.

Environmental Harms Related to Workplaces: Attorneys general have used their enforcement and investigatory powers to pursue employers for wrongdoing that causes harm in both the environmental and worker sec-

59. See Testimony of Laura Mirman-Heslin at 1-4, Public Listening Session on Review of EPA Risk Management Program Regulation (RPM) Revisions Completed Since 2017 (2021), (No. EPA-HQ-OLEM-2021-0312).

60. TERRI GERSTEIN, WORKERS’ RIGHTS PROTECTION AND ENFORCEMENT BY STATE ATTORNEYS GENERAL: STATE AG LABOR RIGHTS ACTIVITIES FROM 2018 TO 2020 (Econ. Pol’y Inst., 2020), <https://www.epi.org/publication/state-ag-labor-rights-activities-2018-to-2020> [https://perma.cc/55CS-3HU]; see also JENNIFER BRAND, NAT’L STATE ATT’YS GEN. PROGRAM AT COLUM. L. SCHOOL, ADDING LABOR TO THE DOCKET: THE ROLE OF STATE ATTORNEYS GENERAL IN THE ENFORCEMENT OF LABOR LAWS 2 (2007) (describing the prior dearth of labor enforcement at AG offices and providing tips for setting up a practice with more affirmative work).

tors, as shown by several examples from the past several years. For example, then-Kentucky Attorney General Andy Beshear investigated a mining company that had entered bankruptcy to examine whether the company complied with bond requirements designed to protect the environment and the workers.⁶¹ Illinois Attorney General Lisa Madigan filed a complaint against ExxonMobil for hydrogen sulfide emissions that endangered workers at a refinery outside of Chicago.⁶² In April 2021, the Illinois Attorney General's Office, along with the U.S. Department of Justice and the U.S. Environmental Protection Agency, signed a consent decree (building on a 2005 consent decree) with ExxonMobil Oil Corporation to resolve violations in a different Illinois location.⁶³ Pennsylvania Attorney General Josh Shapiro conducted an extensive investigation into the risks to neighbors, workers, and first responders posed by the fracking boom in the state⁶⁴ and published a lengthy grand jury report with recommendations.⁶⁵ The recommendations included a call to require disclosure of the chemicals used in the industry before drilling happens, in order to protect workers and first responders from the hazards of addressing a spill or accident without knowing the chemical at issue.⁶⁶ In at least one case, the investigation also led to charges against an oil and gas company that allowed methane emissions to

61. GERSTEIN, *supra* note 60, at 18.

62. Press Release, Lisa Madigan, Ill. Att'y Gen., Madigan, Glasgow Take Action in Latest ExxonMobil Refinery Incident (July 25, 2013), https://illinoisattorneygeneral.gov/press-room/2013_07/20130725.html [<https://perma.cc/E25E-LUJ5>]; Complaint, Illinois ex rel. Madigan v. ExxonMobil Oil Corp., No. 13CH02470 (12th Cir. July 25, 2013) (concluding with a consent decree in June 2014).

63. Press Release, U.S. Dep't of Justice, U.S. Government and State of Illinois Announce Agreement with ExxonMobil's Joliet Refinery to Reduce Air Pollution (Apr. 13, 2021), <https://www.justice.gov/opa/pr/us-governmentand-state-illinois-announce-agreement-exxonmobil-s-joliet-refinery-reduce-air> [<https://perma.cc/B5FB-GNWN>].

64. Press Release, Office of Att'y Gen. Commw. of Pa., 43rd Statewide Grand Jury Finds Pennsylvania Failed to Protect Citizens during Fracking Boom (June 25, 2020) <https://www.attorneygeneral.gov/taking-action/43rdstatewide-grand-jury-finds-pennsylvania-failed-to-protect-citizens-during-fracking-boom/> [<https://perma.cc/6WNH-2GJF>]; Marianne Lavelle, *Pennsylvania Grand Jury Faults State Officials for Lax Fracking Oversight*, INSIDE CLIMATE NEWS (June 26, 2020), <https://insideclimate-news.org/news/26062020/pennsylvania-grand-jury-fracking-natural-gas-health-effects/> [<https://perma.cc/R99A-BJB2>].

65. OFF. OF THE ATT'Y GEN. COMMW OF PA., REPORT 1 OF THE FORTY-THIRD STATEWIDE INVESTIGATING GRAND JURY 1 (2020).

66. *Id.* at 18.

contaminate neighbors' wells.⁶⁷ Wisconsin Attorney General Josh Kaul won a judgment against multiple construction companies for mishandling asbestos when building a new U-Haul site, although the resolution did not require notification of, or attain specific relief for, potentially exposed workers.⁶⁸ And North Carolina Attorney General Josh Stein recently sued manufacturers of firefighting foam arguing that the foam contains PFAS chemicals that are harmful to the firefighters and other first responders who use the material.⁶⁹

Enforcement in wage theft, misclassification, and related cases: A number of AGs have sued or criminally prosecuted employers for wage theft, misclassification, payroll fraud, committing fraud in relation to minority and women owned business certifications for public projects, and more.⁷⁰ Such investigations and actions have been brought in California, the District of Columbia, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and West Virginia.⁷¹

67. Susan Phillips, *Pa. Attorney General Charges Cabot Oil and Gas with Environmental Crimes*, STATEIMPACT PA. (June 15, 2020), <https://stateimpact.npr.org/pennsylvania/2020/06/15/pa-attorney-general-charges-cabot-oil-and-gas-with-environmental-crimes> [https://perma.cc/555K-DEFB].

68. *AG Kaul Announces \$75,000 Penalty for Asbestos Violations in Construction of a U-Haul Facility*, WIS. DEP'T OF JUST. (Jan. 25, 2021), <https://www.doj.state.wi.us/news-releases/ag-kaul-announces-75000-penalty-asbestos-violations-construction-u-haul-facility> [https://perma.cc/N7RG-LLQ].

69. Press Release, N.C. Dep't of Just. Att'y Gen., Attorney General Josh Stein Files Four Lawsuits Against 14 Companies Over Toxic Firefighting Foam (Nov. 4, 2021), <https://ncdoj.gov/attorney-general-josh-stein-files-fourlawsuits-against-14-companies-over-toxic-firefighting-foam/> [https://perma.cc/X9YJ-AVVL].

70. GERSTEIN, *supra* note 60, at 14–17; Press Release, N.Y. State Off. of the Att'y Gen., Attorney General James Secures \$125,000 From Contractor for Violating Diversity Requirements in Public Works Project (Apr. 6, 2022), <https://ag.ny.gov/press-release/2022/attorney-generaljames-secures-125000-contractor-violating-diversity-requirements> [https://perma.cc/3K3X-KV9M]; *see also* TERRI GERSTEIN, HOW DISTRICT ATTORNEYS AND STATE ATTORNEYS GENERAL ARE FIGHTING WORKPLACE ABUSES (Econ. Pol'y Inst., 2021) [hereinafter GERSTEIN, WORKPLACE ABUSES], <https://files.epi.org/uploads/224957.pdf> [https://perma.cc/3RSP-U3L5] (describing the growth in State AG criminal enforcement cases regarding wage theft, misclassification, failure to pay unemployment, worker's compensation fraud, labor trafficking, safety and health violations, sexual assault, and witness tampering and retaliation).

71. Press Release, Commw. of Va. Off. of the Att'y Gen., Attorney General Herring Brings First Worker Misclassification Charges (Oct. 6, 2021), <https://www.oag.state.va.us/media-center/news-releases/2169-october-6-2021-herring-brings-first-workermisclassification-charges> [https://perma.cc/M8B4-PUU8]; Press Release, Md. Off. of the Att'y Gen., Contracting Company Owner Pleads Guilty to Stealing Employee Wages (Nov. 5, 2021), <https://www.marylandattorneygeneral.gov/press/2021/110521a.pdf> [https://perma.cc/8YNH-VE42]; Press Release, Off. of the Vt. Att'y Gen., Statement by Attorney General T.J. Donovan on Koffee Kup Decision Regarding Paid Time Off (PTO) (July 14,

Misclassification: Improperly labeling workers as independent contractors when they should be treated as employees allows companies to deprive the workers of a host of rights. AGs have been active in pursuing claims against companies that illegally misclassify their workers. Some provide workers with information about misclassification and a number to call if the worker thinks they have been misclassified.⁷² Others have brought lawsuits. California Attorney General Bonta (along with three cities) sued Uber and Lyft for misclassification.⁷³ Massachusetts Attorney General Maura Healey has a similar case against these two companies; her office recently defeated their motion to dismiss.⁷⁴ The attorneys general of the District of Columbia, Massachusetts, New York, and Pennsylvania have pursued other actions against companies for misclassification of workers.⁷⁵

2021), <https://ago.vermont.gov/blog/2021/07/14/statement-by-attorney-general-t-j-donovan-on-koffee-kup-decision-regarding-paidtime-off-pto/> [<https://perma.cc/2SF4-ECG9>]; N.Y. State Off. of the Att’y Gen., *supra* note 70; GERSTEIN, *supra* note 60, at 14–17 (collecting examples for California, Pennsylvania, Michigan, Minnesota, Rhode Island); GERSTEIN, *supra* note 60, at 9–10, 16–17 (collecting examples for D.C., Massachusetts, Minnesota, Montana, New Jersey, New York, Washington, and West Virginia).

72. See *Independent Contractor Misclassification*, THE OFF. OF THE MINN. ATT’Y GEN., <https://www.ag.state.mn.us/Brochures/pubMisclassification.pdf> [<https://perma.cc/G468-GJLD>] (providing workers with a number to call if they believe they have been misclassified); *Contact*, N.Y. STATE OFF. OF ATT’Y GEN., LAB. BUREAU, <https://ag.ny.gov/labor/contact> [<https://perma.cc/TUU5-FXSA>] (providing a complaint form and contact information for workers who think they have been misclassified, among other issues that may arise).

73. *People v. Uber Technologies, Inc.*, 270 Cal. Rptr. 3d 290, 295–96, 332 (Cal. Ct. App. 2020).

74. *Healey v. Uber Technologies, Inc.*, No. 2084 Civ. 01519-BLS1, 2021 WL 1222199, at *6 (Mass. Super. Mar. 25, 2021).

75. GERSTEIN, *supra* note 60, at 15; Press Release, Off. of the Att’y Gen. for the D.C., AG Racine Sues Construction Companies for Misclassifying Workers and Violating Workers’ Rights (Oct. 18, 2021), <https://oag.dc.gov/release/ag-racinesues-construction-companies> [<https://perma.cc/3P9Z-5NN6>]; see generally Press Release, Off. of Att’y Gen. Commw. of Pa., Hawbaker Sentenced, Will Pay Workers More than \$20 Million in Stolen Wages (Aug. 3, 2021), https://www.attorneygeneral.gov/taking-action/ta_cats/hawbaker-sentenced-will-pay-workers-more-than-20-million-in-stolen-wages/ [<https://perma.cc/QH9S-S6D2>]; Press Release, Off. of Att’y Gen. Commw. of Pa., AG Shapiro, Delco DA Stollsteimer Announce Joint Enforcement Pilot Program to Stop Construction Worker Misclassification (Mar. 9, 2020) https://www.attorneygeneral.gov/taking-action/ta_cats/ag-shapiro-delco-da-stollsteimer-announce-joint-enforcement-pilot-program-to-stop-constructionworker-misclassification/ [<https://perma.cc/6Y5T-EH2J>]; Alex Rose, *Four charged in novel misclassification case*, THE DEL. CNTY. DAILY TIMES (Aug. 19, 2021), <https://www.delcotimes.com/2021/01/11/four-charged-in-novel-misclassification-case> [<https://perma.cc/N6PG-742H>]; see generally Press Release, Off. of the Att’y Gen. for the D.C., Ahead of Labor Day, AG Racine Hosts Roundtable Discussion with Workers & Advocates to Help Workers Understand Their Rights (Sept. 1, 2021) <https://oag.dc.gov/release/ahead-labor-day-ag-racine-hosts-roundtable> [<https://perma.cc/QFT5-9PAR>]; Press Release, N.Y. State Off. of the Att’y Gen., A.G. Schneiderman Announces Guilty Pleas and Convictions of Three Queens Construction Companies for Failing to Pay 150 Workers Over \$370,000 in Wages (Feb. 7, 2018),

B. Policy and Advocacy

AGs have other tools in addition to enforcement. These activities fall into the broad categories of representing and advising client agencies, educating the public, conducting investigations and deploying other soft powers, advocating on policy at the federal and state levels, and litigating against the federal government.

1. Representing and Advising State Agencies

Attorneys general have a role in advising state agencies on implementing programs and laws. For example, New York Attorney General James has been advising state agencies as they implement the state's Climate Leadership and Community Protection Act "to ensure it meets its goal of cutting greenhouse gas emissions and fostering a just and equitable transition to a green economy in New York."⁷⁶ In some states, AGs serve as general counsel for state agencies, while in others, they may have a more informal advisory role. AGs are also usually state agencies' litigation counsels, defending state laws and state-level regulatory policies that flow from those policies.⁷⁷ And AGs can issue advisories to state and municipal agencies, providing them with guidance about how to proceed in light of new legal developments. For example, a number of AGs issued advisories about how state and municipal agencies should proceed with regard to union members after the Supreme Court decided *Janus v. AFSCME, Council 31* concerning public employees who were not union members.⁷⁸

<https://ag.ny.gov/press-release/2018/ag-schneiderman-announces-guilty-pleas-and-convictions-three-queens-construction> [<https://perma.cc/FG3H-T9XU>].

76. Press Release, N.Y. State Off. of the Att'y Gen., On Earth Day 2021, Attorney General James Highlights Long Island and New York City Environmental Accomplishments (Apr. 22, 2021), <https://ag.ny.gov/press-release/2021/earth-day-2021-attorney-general-james-highlights-long-island-and-new-york-city> [<https://perma.cc/2429-9AZG>].

77. See, e.g., *Allco Finance Ltd. v. Klee*, 861 F.3d 82 (2d Cir. 2017) (rejecting a challenge to Connecticut's program promoting renewable energy). See also GERSTEIN, *supra* note 60, at 24–25.

78. *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018); see also AM. CONST. SOC'Y, LIST OF STATE ATTORNEYS GENERAL GUIDANCE/ADVISORIES ON THE RIGHTS AND DUTIES OF PUBLIC SECTOR EMPLOYERS AND EMPLOYEES AFTER *JANUS V. AFSCME COUNCIL 31* (2019), https://www.acslaw.org/wp-content/uploads/2019/03/State-AG-Guidance-to-Public-Sector-Employers_Employees-after-Janus-v.-AFSCME-Council-31-1.pdf [<https://perma.cc/2B6P-LTPN>].

2. Public Education

Attorney general advocacy can also take the form of community outreach and awareness campaigns. For example, California AG Bonta recently issued a report highlighting ten rights that workers should be aware of, including “the right to organize and join a union” and the right to a minimum wage, along with other wage-and-hour protections.⁷⁹ There are many other examples of this public education work, including AGs who worked to bring attention to COVID-related policies and guidance,⁸⁰ and AGs that held worker’s rights events and initiatives.⁸¹ In New York, AG James issued a press release supporting the unionizing rights of Starbucks’ employees in Buffalo.⁸² Washington D.C. Attorney General Racine testified in Congress before the Education & Labor Committee,⁸³ and he published a report about worker misclassification and hosted an event to highlight worker rights.⁸⁴

These public education activities include work related to addressing the climate crisis. For example, in August 2021, Oregon Attorney General Ellen F. Rosenblum ordered the release of the names of people who died of hyperthermia during the heat wave that hit the state in June 2021, several of whom suffered from unsafe exposure to heat at work.⁸⁵ AG Rosenblum took this step to “inform the public about the impact of this historic event

79. Press Release, State of Cal. Dep’t of Just., On Labor Day, Attorney General Bonta Highlights Key Worker Protections (Sept. 6, 2021), <https://oag.ca.gov/news/press-releases/labor-day-attorneygeneral-bonta-highlights-key-worker-protections> [https://perma.cc/K5H4-JQC4].

80. GERSTEIN, *supra* note 60, at 8.

81. *Id.* at 20.

82. Press Release, N.Y. State Off. of the Att’y Gen., Attorney General James Releases Statement in Support of Buffalo Starbucks Employees’ Efforts to Unionize (Nov. 16, 2021), <https://ag.ny.gov/press-release/2021/attorneygeneral-james-releases-statement-support-buffalo-starbucks-employees> [https://perma.cc/RP4Z-G275].

83. *Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy: Hearing on H.R.6189 Before the H. Subcomm. on Workforce Prot.*, 116th Cong. (2019) (statement of Karl A. Racine, Att’y Gen. for the D.C.).

84. Press Release, Off. of the Att’y Gen. for the D.C., AG Racine Sues Construction Companies for Misclassifying Workers and Violating Workers’ Rights (Oct. 18, 2021), <https://oag.dc.gov/81release/ag-racine-sues-construction-companies> [https://perma.cc/2PMQ-JRJP].

85. Amelia Templeton & Monica Samayoa, *Oregon Medical Examiner Releases Names of June Heat Wave Victims*, OPB (Aug. 6, 2021), <https://www.opb.org/article/2021/08/06/oregon-june-heat-wave-deaths-names-revealed-medical-examiner/> [https://perma.cc/2ZJJ-6SCV].

on affected communities, help the public assess the government's preparedness and responsiveness, and facilitate the development of appropriate public policies that anticipate future extreme climate events."⁸⁶

3. Investigations and Other Soft Powers

AGs also have the ability to use advisories, opinion letters, or other vehicles such as investigatory letters, to influence policy and company behavior.⁸⁷ For example, in 2017, after receiving complaints from workers unable to use certain job search websites because of built-in age cutoffs, the Illinois AG sent letters to Beyond.com, CareerBuilder, Indeed Inc., Ladders Inc., Monster Worldwide Inc. and Vault requesting information about their practices.⁸⁸ After receiving the letters, several of the companies addressed the issue.⁸⁹

In 2016, nine state attorneys general sent joint letters to a number of large national retailers asking for information about the use of "on-call shifts," a practice that required workers to report to their jobs (in person or by phone or text), in order to learn whether they would actually be working (and therefore paid for) that "on call" shift.⁹⁰ The practice was harmful to workers because they had to be available for work (arranging child or elder care and foregoing other work or educational opportunities), with no guarantee of actually working or being paid for the shift. Ultimately, the retailers in question agreed to stop using on-call shifts.⁹¹ Also, fourteen state AG offices settled with several fast-food franchisors for including "no-poach" or "no-hire" agreements in their franchise contracts between 2019 and 2020;

86. *Oregon Attorney General Orders Release of Names of 83 Fatalities from Heat Wave, Citing Public Interest*, THE OREGONIAN/OREGONLIVE.COM (Aug. 2, 2021), <https://www.oregonlive.com/weather/2021/07/oregon-attorney-general-orders-release-of-names-of-83-fatalities-from-heat-wave-citing-public-interest.html> [https://perma.cc/B5QK-SCKF] (quoting the order).

87. GERSTEIN, *supra* note 60, at 3 (explaining that beyond their core work, AGs "issue opinion letters and advisories, propose legislation, issue reports, educate the public about important rights, file amicus briefs, submit comments and provide testimony on state and federal legislation, and author op-eds.").

88. Press Release, Ill. Att'y Gen., Madigan Probes National Job Search Sites Over Potential Age Discrimination (Mar. 2, 2017), https://illinoisattorneygeneral.gov/press-room/2017_03/20170302.html [https://perma.cc/WWX3-9BFM].

89. Ina Jaffe, *Older Workers Find Age Discrimination Built Right Into Some Job Websites*, NPR (Mar. 28, 2017), <https://www.keranews.org/2017-03-28/older-workers-find-age-discrimination-built-right-into-some-job-websites> [https://perma.cc/SE6Y-6Q5J].

90. Flanagan, *supra* note 18, at 122.

91. *Id.*

these agreements prevented workers from getting a job with a different franchisee in the same chain.⁹²

4. Legislative Advocacy and Litigation on Policy Issues

Attorneys general have also played a significant role in advocating for policy goals in Congress, at federal agencies and at the state level.⁹³ For example, AGs successfully opposed a harmful methane rule in 2017, successfully fought off the steepest of the proposed budget cuts for EPA, and successfully advocated for legislation to address hydrofluorocarbons.⁹⁴ Another example: in August 2021, a coalition of 17 AGs sent a letter urging the Senate to pass federal legislation known as the “PRO Act,” which proposes to strengthen and expand employees’ union and organizing rights in the workplace.⁹⁵ And in July 2019, AGs urged Congress to “[p]rohibit the use and storage of a firefighting foam containing PFAS” because of the serious risks that PFAS contamination poses to human health and the environment.⁹⁶

AGs have also engaged in advocacy in relation to state-level legislation. Minnesota AG Keith Ellison recently urged a number of state-level policy changes in relation to women’s economic security.⁹⁷ Rhode Island AG Peter Nerohna has spearheaded efforts to pass a bill increasing penalties for wage theft.⁹⁸ And Washington AG Bob Ferguson proposed a bill recently signed into law to provide stipends and reimburse some expenses so that people with lived experiences can participate in state-wide stakeholder groups, councils, commissions, boards and other similar groups set up to assess and

92. See GERSTEIN, *supra* note 60, at 17.

93. *Id.* at 19; see also GERSTEIN, *WORKPLACE ABUSES*, *supra* note 70 (explaining that states should strengthen statutes that protect workers).

94. HAMPDEN MACBETH, *STATE ENERGY & ENV’T IMPACT CTR.*, CONGRESS: OPPORTUNITIES FOR ATTORNEYS GENERAL IN ENVIRONMENTAL, ENERGY, AND CLIMATE POLICY 1 (2021).

95. State of Cal. Off. of the Att’y Gen., Comment Letter in Support of H.R. 842 “Protecting the Right to Organize Act of 2021” (Aug. 10, 2021), https://ag.ny.gov/sites/default/files/letter_from_state_attorneys_general_re_pro_act.pdf [<https://perma.cc/36M2-4UP7>]; see also H.R. 842, 117th Cong. (1st Sess. 2021) (indicating that, as of June 2022, the PRO Act is still awaiting passage by the Senate).

96. Attorneys Gen. of N.Y. et al., Comment Letter on PFAS Legislation (July 30, 2019), https://ag.ny.gov/sites/default/files/multistate_pfas_legislative_letter_7.30.19_final.pdf [<https://perma.cc/4DZ4-J64G>].

97. THE OFF. OF MINN. ATT’Y GEN., REPORT OF THE MINNESOTA ATTORNEY GENERAL’S ADVISORY TASK FORCE ON EXPANDING THE ECONOMIC SECURITY OF WOMEN 22–24 (2022).

98. *Stand Up for Rhode Island Workers*, STATE OF R.I. ATT’Y GEN. (Oct. 17, 2021), <https://riag.ri.gov/what-we-do/stand-rhode-island-workers> [<https://perma.cc/5U2S-KAXN>].

make recommendations to address problems like those raised by the energy transition.⁹⁹

Attorneys general have also frequently engaged in advocacy to improve federal environmental standards. For example, a coalition of AGs recently provided testimony to EPA urging it to improve its safety rules for chemical plants that deal in hazardous air pollutants. AG recommendations included, for example, requiring facilities to consider safer alternative technologies, conducting real-time air-monitoring, and improving emergency communications with fenceline communities bordering plants that emit hazardous waste.¹⁰⁰

Attorneys general have also used notice and comment procedures during the rulemaking process to advocate for stronger federal protections in areas from pesticide use to wages and benefits. Coalitions of AGs have filed comments addressing a range of work-related issues, including child labor, overtime coverage, joint employment, misclassification, and non-compete provisions in employment contracts.¹⁰¹

Attorneys general have also actively litigated or filed amicus briefs with the goal of changing federal policy. When the Trump administration finalized a rule that depressed wages for farmworkers, the California Attorney General's Office filed an amicus brief supporting a challenge to the rule, explaining that the rule harmed farmworkers, exacerbated the farmworker housing crisis, and undermined California enforcement of worker protection laws.¹⁰² In December 2020, a federal district court in California enjoined the rule.¹⁰³ AGs sued and helped obtain an order blocking enforcement of a Trump-era rule that loosened restrictions on pesticide use and put workers at risk.¹⁰⁴ AGs engaged on numerous other federal rules during the Trump era, including advocating for regulations of ethylene oxide (a carcinogen

99. S. 5793, 67th Leg., Reg. Sess. (Wash. 2022); *see also* Press Release, Wash. State. Off. of the Att'y Gen., Legislature passes AG Ferguson, Sen. Wilson bill that provides stipends to individuals with lived experience who participate on task forces (Mar. 8, 2022), <https://www.atg.wa.gov/news/news-releases/legislaturepasses-ag-ferguson-sen-wilson-bill-provides-stipends-individuals> [<https://perma.cc/854X-SP3L>].

100. Mirman-Heslin, *supra* note 59.

101. GERSTEIN, *supra* note 60, at 22–23.

102. Brief for the State of Cal. as Amicus Curiae Supporting Plaintiffs, *United Farm Workers v. United States Dep't of Labor*, 509 F. Supp. 3d 1225 (E.D. Cal. 2020) (No. 1:20-CV-1690-DAD-JLT).

103. *United Farm Workers v. United States Dep't of Labor*, 509 F. Supp. 3d 1225, 1255 (E.D. Cal. 2020).

104. Complaint at 1, *New York v. EPA*, No. 20 Civ. 10642, 2020 WL 13281344 (S.D.N.Y. Dec. 29, 2020); *Rural & Migrant Ministry v. EPA*, 510 F. Supp. 3d 138 (S.D.N.Y. 2020).

emitted at commercial sterilization and fumigation operations which endangers workers),¹⁰⁵ and methylene chloride,¹⁰⁶ a solvent that endangers workers and fenceline communities. Since the transition to the Biden administration, they continue to advocate with the relevant agencies.¹⁰⁷

Finally, AGs have played an important role in educating constituents about their rights, alerting them to potential scams,¹⁰⁸ and highlighting pressing issues by authoring op-eds,¹⁰⁹ issuing statements, public appearances, and more.

As these examples show, AGs have numerous tools at their disposal to use in pursuit of workers' rights, environmental protection, and a just transition.

III. POTENTIAL FOR AG ACTION IN THE JUST TRANSITION SPACE

When it comes to addressing the climate crisis, environmental and labor issues intersect in multiple ways. Increasing heat and other extreme weather caused by climate change are already harming and endangering many workers.¹¹⁰ Policies that shift the economy away from one source of

105. Attorneys Gen. of Ill. et al., Comment Letter on Proposed Rulemaking of National Emissions Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations, 84 Fed. Reg. 67, 889 (Dec. 12, 2019) (Feb. 10, 2020), <https://ago.vermont.gov/wp-content/uploads/2020/02/20200210-Attorneys-General-EtO-Sterilizer-ANPRM-Comment.pdf>.

106. Petition for Review, *New York v. Wheeler*, No. 20-2729 (2d Cir. Aug. 18, 2020); see also GERSTEIN, *supra* note 60, at 22–23 (describing additional AG advocacy efforts).

107. See, e.g., Press Release, Off. of Att'y Gen. Maura Healey, AG Healey Co-Leads Multistate Coalition in Support of Federal Effort to Prioritize Workplace Rights and Safety in Immigration Enforcement (Nov. 15, 2021), <https://www.mass.gov/news/ag-healey-co-leads-multistate-coalition-in-support-of-federal-effort-to-prioritize-workplace-rights-and-safety-in-immigration-enforcement> [<https://perma.cc/85NY-XC53>]; see also Press Release, Wash. State Off. of the Att'y Gen., AG Ferguson blasts Biden administration's "cruel effort" to eliminate protections for Hanford workers (Sept. 14, 2021), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-blasts-biden-administration-s-cruel-effort-eliminate-protections> [<https://perma.cc/HGD3-YQ7A>].

108. See, e.g., *Michigan AG Nessel's Scam Prevention Commercial*, CLICKONDETROIT: LOCAL NEWS (Feb. 3, 2022, 7:47AM), <https://www.clickondetroit.com/video/local-news/2022/02/03/michigan-ag-nessels-scam-prevention-commercial/> [<https://perma.cc/WX4U-KCV2>].

109. See, e.g., Maura Healey, *Opinion: The Justice Department Failed to Do Its Job in Settling with the Sackler Family*, WASH. POST (Oct. 23, 2020), <https://www.washingtonpost.com/opinions/2020/10/23/justice-department-failed-do-its-job-settling-with-sackler-family/> [<https://perma.cc/ZNL6-WT3K>].

110. See *Impact of Climate on Workers*, CDC: NAT'L INST. FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH) (Dec. 6, 2016), <https://www.cdc.gov/niosh/topics/climate/how.html> [<https://perma.cc/J9JR-WZ42>].

energy to others mean that jobs will be shifting too and whole segments of U.S. society have borne, and will continue to bear, the brunt of reliance on fossil fuels in an inequitable manner. These concerns together have led to the emergence of the concept known as a “just transition,” specifically focused on protecting workers and righting historic wrongs in the economy.

AGs are likely to be incentivized to engage on these issues. First, the issues at this intersection are intensely felt at the state and local level—from stronger and more dangerous heat waves that kill workers¹¹¹ to flooding that threatens the safety of workers at chemical plants and neighboring communities.¹¹² Second, the climate crisis and attendant concerns over the affected workers has been subject to the “tyranny of the status quo” at the federal level.¹¹³ This problem was recently exacerbated by the Supreme Court’s decision in *West Virginia v. EPA*, curbing EPA’s ability to take timely needed action to protect the environment.¹¹⁴ Third, many states have been experiencing these issues, creating an opportunity to collaborate or combine forces to take action.

This Part begins by setting forth a definition for a “just transition,” to guide the discussion. It then examines, through the factors motivating AG action, the concerns at play in bringing about a just transition. Finally, given that the incentive for AG action is likely present, this Part concludes by surveying the tools that are indeed available for AGs to engage in the just transition space.

A. Defining “Just Transition”

Broadly speaking, the term “just transition” has been defined as “[a]n approach to energy transition that includes protections for workers and communities”¹¹⁵ As such, a “plan for just transition provides and guar-

111. Somini Sengupta, *Heat, Smoke and Covid Are Battering the Workers Who Feed America*, N.Y. TIMES (Sept. 4, 2020), <https://www.nytimes.com/2020/08/25/climate/california-farm-workers-climate-change.html> [https://perma.cc/JBV5-3DGY].

112. See *Arkema Inc. Chemical Plant Fire*, CHEM. SAFETY BD., <https://www.csb.gov/arkema-inc-chemical-plant-fire/> [https://perma.cc/C4DF-D6YZ] (describing how flooding during Hurricane Harvey led to explosions at the plant).

113. See also Lisa Friedman & Coral Davenport, *Manchin Rejects Landmark Legislation, Putting Biden’s Climate Goals at Risk*, N.Y. TIMES (Dec. 19, 2021), <https://www.nytimes.com/2021/12/19/climate/manchin-climate-build-back-better-bill.html> [https://perma.cc/PW9Q-D338].

114. *West Virginia v. EPA*, 142 S.Ct. 2587, 2615–2616 (2022).

115. J. MIJIN CHA & LARA SKINNER, *THE WORKER INST. AT CORNELL, REVERSING INEQUALITY, COMBATTING CLIMATE CHANGE: A CLIMATE JOBS PROGRAM FOR NEW YORK STATE* 5 (2017).

antees better and decent jobs, social protection, more training opportunities and greater job security for all workers affected by global warming and climate change policies,” as explained by the Just Transition Centre, a group established by the International Trade Union Confederation.¹¹⁶

Advocates have used three different lenses, all relevant to the present discussion, to examine the concept of a just transition. First, a just transition means ensuring that new clean energy jobs are good jobs. Workforce development and other experts have come up with varied definitions of what a quality job looks like, but they generally share the same elements: a living wage, decent benefits, safe working conditions, a predictable work schedule, job security, potential for advancement, and a voice on the job, ideally through collective bargaining.¹¹⁷ A just transition would require, as an initial baseline, aggressive enforcement of existing worker protection laws. It would also require policies to strengthen workers’ rights, including high-road employment practices and promotion of and ready access to unionization in the clean energy sector.

Second, a just transition means humane support and assistance for workers currently in the fossil fuel sector, so that “policies which are environmentally beneficial do not cause undue harm to the social or economic well-being of those who are, or have traditionally been, dependent on the fossil fuel sector.”¹¹⁸ Along these lines, the Just Transition Fund was set up by a coalition of funders to “create economic opportunity for the frontline communities and workers hardest hit by the transition away from coal.”¹¹⁹

Third, a just transition refers to the need to direct new jobs and opportunities toward marginalized communities and populations that have been disproportionately burdened by pollution.¹²⁰ As a post by the Natural Resources Defense Council (“NRDC”) puts it: “A just transition should also account for the well-being of community members who never worked for the

116. *Just Transition Centre*, INT’L TRADE UNION CONFEDERATION, <https://www.ituc-csi.org/just-transition-centre> [https://perma.cc/Z9HJ-TBZ3].

117. See *What Is a “Good” Job?*, GOOD JOBS INST., <https://goodjobsinstitute.org/what-is-a-good-job/> [https://perma.cc/RYS9-QQ3G]; *Job Quality: A Statement of Purpose*, ASPEN INST. (Dec. 14, 2017), <https://www.aspeninstitute.org/blog-posts/job-quality-statement-of-purpose/> [https://perma.cc/Z9SQ-B5AZ]; INSIGHT AT PAC. CMTY. VENTURES, MOVING BEYOND JOB CREATION: DEFINING AND MEASURING THE CREATION OF QUALITY JOBS 4–5 (2016).

118. Kieran Harrahill & Owen Douglas, *Framework Development for ‘Just Transition’ in Coal Producing Jurisdictions*, 134 ENERGY POL’Y 1, 1–2 (2019).

119. *Overview*, JUST TRANSITION FUND, <https://www.justtransitionfund.org/overview> [https://perma.cc/NJ7N-VDTG].

120. EDOUARD MORENA ET AL., JUST TRANSITION RSCH. COLLABORATIVE, MAPPING JUST TRANSITION(S) TO A LOW-CARBON WORLD 4–5 (2018) (discussing that the concept of a just transition has its roots in “social and environmental justice.”); see also Irina Velicu & Stefania Barca, *The Just Transition and its work of inequality*, 16 SUSTAINABILITY: SCI., PRAC. & POL’Y 263, 266 (2020).

plant but breathed the polluted air and saw very little benefit from the facility. To focus entirely on displaced workers and leave historically marginalized people out of the just transition picture would be, well, unjust.”¹²¹ Similarly, Peggy Shepard, co-founder and Executive Director of WE ACT for Environmental Justice explained that planning around the economic transformation brought about by the move to clean energy should include the needs of frontline communities.¹²²

The three lenses intersect in important ways here because the new jobs that are directed towards communities that have been marginalized or disproportionately burdened by pollution should also be jobs that come with the features that make them good jobs, such as benefits, union representation, and strong enforcement of worker protections.

B. Are the Incentives for AG Action Present?

Currently, the attorneys general in nine states and the District of Columbia have announced formation of units dedicated to working on labor issues in a proactive manner;¹²³ moreover, a new law in Colorado requires creation of a Worker and Employee Protection Unit in the AG’s office there.¹²⁴ Offices with dedicated labor units have brought many investigations and prosecutions into varied types of workplace violations in a number of industries. Some AGs also took a leading role in ensuring worker protections during the COVID-19 pandemic, including by investigating workplace safety practices and urging corporations to conform with COVID-19 safety regulations.¹²⁵

Despite this growing involvement of state AGs, there is still a great need for more workplace enforcement. A 2018 report by *Politico* found a stark lack of investigators available to address issues as serious as minimum-

121. Brian Palmer, *This Is What a Just Transition Looks Like*, NAT. RES. DEF. COUNCIL (Mar. 2, 2020), <https://www.nrdc.org/stories/what-just-transition-looks> [<https://perma.cc/QD5U-2442>]; see also *What is Just Transition?*, JUST TRANSITION ALL., <http://jtalliance.org/what-is-just-transition/> [<https://perma.cc/6AT4-WF9R>] (explaining that the “development of fair economic, trade, health and safety and environmental policies must include both the frontline workers and fenceline communities most affected by pollution, ecological damage and economic restructuring”).

122. Bloomberg Sustainable Business Summit (July 13, 2021), <https://www.bloomberglive.com/blog/event-highlights-from-sustainable-business-summit-global-july13-day1/> [<https://perma.cc/N4LG-HAE2>] (transcript on file with author).

123. See GERSTEIN, *supra* note 60, at 4 (explaining that the AG offices of California, Massachusetts, New York, Illinois, Michigan, Minnesota, New Jersey, Pennsylvania have all established units dedicated to labor issues).

124. S.B. 22-161, 73d Gen. Assemb., 1st Reg. Sess. (Colo. 2022) <https://leg.colorado.gov/bills/sb22-161> [<https://perma.cc/E66S-426F>].

125. See GERSTEIN, *supra* note 60, at 5–6.

wage violations.¹²⁶ Public labor enforcement agencies are underfunded.¹²⁷ This gap exists despite high rates of violations: researchers in 2017 estimated that employers in the ten most populous states steal \$8 billion annually through minimum wage violations alone.¹²⁸ When employers are found to have violated the law, often the money owed is not ultimately collected, according to the *Politico* report.¹²⁹ In addition, workplace discrimination remains a serious issue that has likely been exacerbated by the COVID-19 crisis, and other workplace issues disproportionately affect workers of color: for example, “Black workers are twice as likely as white workers to report that they or someone at work may have been punished or fired for raising safety concerns about COVID-19.”¹³⁰

With this backdrop, the question is whether states and their AGs can or will engage in the climate and labor space, given the emerging crisis. This Section discusses some of the limits on AGs acting on these issues and then assesses whether the incentives are there to engage.

1. Limits and Opportunities

An important limit to AGs’ ability to play a gap-filling role in the labor space is federal preemption, which forbids states from legislating or taking action in areas in which the federal government intends to occupy the field. The National Labor Relations Act provides workers with the right to join a union, collectively bargain, and engage in concerted activity to improve working conditions.¹³¹ Broad preemption under the NLRA constrains what states may do in relation to organizing activities.¹³²

126. Marianne Levine, *Behind the Minimum Wage Fight, A Sweeping Failure to Enforce the Law*, POLITICO (Feb. 18, 2018), <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644> [https://perma.cc/JFZ2-KSA8].

127. KATE HAMAJI ET AL., UNCHECKED CORPORATE POWER: FORCED ARBITRATION, THE ENFORCEMENT CRISIS, AND HOW WORKERS ARE FIGHTING BACK 14 (Econ. Pol’y Inst. & Ctr. for Popular Democracy, 2019).

128. David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers’ Paychecks Each Year*, ECON. POL’Y INST. (May 10, 2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/> [https://perma.cc/X9JD-2L3S].

129. Levine, *supra* note 126 (“41 percent of the wages that employers are ordered to pay back to their workers aren’t recovered, according to a POLITICO survey of 15 states”).

130. Jenny R. Yang & Jane Liu, *Strengthening Accountability for Discrimination*, ECON. POL’Y INST. (Jan. 15, 2021), <https://www.epi.org/unequalpower/publications/strengthening-accountability-for-discrimination-confronting-fundamental-power-imbalances-in-the-employment-relationship/> [https://perma.cc/PVR9-625U].

131. Stephen F. Befort, *Demystifying Federal Labor and Employment Law Preemption*, 13 THE LAB. LAW. 429, 431 (1998).

132. See, e.g., *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959); see also *Machinists v. Wis. Emp. Rel. Comm’n*, 427 U.S. 132 (1976). See Curtis L. Mack et al., Univ. of

Nonetheless, there is still significant leeway for AG action under the exceptions to preemption, including in relation to state's police powers and powers left untouched by the NLRA or preemptive federal laws.¹³³ Preemption does not apply in areas determined to be so important to state interests that Congress has to speak clearly to remove state authority.¹³⁴ Many regulations have survived preemption challenges based on this local interest exception.¹³⁵

2. Applying the Factors leading to AG involvement

The various factors that generally spark AG action—harm to constituents, insufficient federal action, limitations on other actors who might address the problem, and multi-jurisdictional harm—are all present in the labor context as the energy sector moves from fossil fuel-fired generation to clean energy. There is an enormous gap in the enforcement of workers' rights, that will only deepen with coming changes to the environmental sector. And with the exception of the (significant) monetary incentives for clean energy development in the Inflation Reduction Act of 2020, the U.S. Congress had consistently been unwilling to enact federal climate policy¹³⁶ despite both President Obama and President Biden's attempts to make it a priority;¹³⁷ even with the new law, there is much state-level and regulatory work that must still be done to ensure that the country meets its climate

Mich. L. Sch., Presentation at the 14th Annual Labor and Employment Law Virtual Conference: The Fundamentals of Federal Labor Preemption 2 (Nov. 2020).

133. Mack et al., *supra* note 132.

134. See *id.* at 7.

135. Befort, *supra* note 131, at 432; see also Moshe Z. Marvit, *The Way Forward for Labor Is Through the States*, THE AM. PROSPECT (Sept. 1, 2017), <https://prospect.org/labor/way-forward-labor-states/> [<https://perma.cc/B7S9-ZLH6>] (describing areas of the law where states retain their authority to legislate and regulate, including minimum wage and antidiscrimination).

136. Josh Siegel, Kelsey Tamborrino & Alex Guillen, *Biden's Climate Agenda Stalls, and Progressives Fume*, POLITICO (Feb. 13, 2022), <https://www.politico.com/news/2022/02/13/biden-climate-agenda-promises-what-happened-00007308> [<https://perma.cc/QJ52-XMJV>]; Dana Nuccitelli, *President Obama Acts on Climate Change by Enforcing the Law*, THE GUARDIAN (June 25, 2013), <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2013/jun/25/climate-change-carbon-emissions-president-obama-epa> [<https://perma.cc/D3QM-2JMZ>].

137. See The White House, Executive Order on Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/> [<https://perma.cc/YJM2-Q72Q>]; President Obama's Climate Action Plan (June 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/cap_progress_report_final_w_cover.pdf [<https://perma.cc/XGG5-4XRL>].

goals. Given the history of AGs' work in the labor space as well as their abilities to fill gaps that other actors cannot, they are uniquely positioned to help ensure a just transition. This Section examines how the key factors that generally lead to AG action are present in the context of the clean energy transition and worker's rights.

a. Labor and Climate Issues Are Salient at the State Level

When an issue has a particularly state-level impact, it increases the likelihood that AGs will engage, as discussed above.¹³⁸ AGs have been characterized as lawyers of the people, with a primary duty of enforcing and defending state laws and protecting the legal rights of the people in their state. State AGs "often interpret this role to include representation of their state's most vulnerable residents."¹³⁹

Some labor issues are genuinely state-oriented or local in scope, and hence will draw the attention of AGs. There are myriad instances of this; some specific examples provide a sense of the overall picture. One highly localized violation: in 2004, the New York AG office investigated a practice involving immigrant bathroom attendants working at high-end Manhattan restaurants and night clubs via a placement agency. The workers received only tips, in violation of law, and the placement agency even took a portion of workers' tips.¹⁴⁰ The AG office obtained a settlement resulting in restitution to the workers and improved business practices.¹⁴¹

Another example of a local issue which triggered action by New York's AG involved systemic labor law violations committed by two interrelated car wash chains with shared ownership.¹⁴² The companies had a practice of underpaying workers, underreporting employees on state unemployment in-

138. See *supra* note 20–31 and accompanying text.

139. Flanagan, *supra* note 18, at 104–05.

140. Peter Romer-Friedman, *Eliot Spitzer Meets Mother Jones: How State Attorneys General Can Enforce State Wage and Hour Laws to Protect America's Most Vulnerable Workers*, 39 COLUM. J.L. & SOC. PROBS. 495, 529 (2006); Andrew Jacobs, *Standing Sentry, Armed With a Towel*, N.Y. TIMES (Dec. 9, 2004), <https://www.nytimes.com/2004/12/09/nyregion/standing-sentry-armed-with-a-towel.html> [<https://perma.cc/98TP-2TJX>].

141. Press Release, Office of the Attorney General, Investigation Reveals Deplorable Plight of Restaurant Bathroom Attendants (Oct. 7, 2004), <https://ag.ny.gov/press-release/2004/investigation-reveals-deplorable-plight-restaurant-bathroom-attendants> [<https://perma.cc/XX34-9UD3>].

142. Press Release, Office of the Attorney General, A.G. Schneiderman Announces Nearly \$4m Settlement With Two NYC Car Wash Chains For Underpaying Workers And Other Violations (March 6, 2016), <https://ag.ny.gov/press-release/2014/ag-schneiderman-announces-nearly-4m-settlement-two-nyc-car-wash-chains> [<https://perma.cc/E7AX-D56G>].

surance returns, and failing to carry required workers' compensation insurance for all employees.¹⁴³ The AG obtained a settlement of nearly \$4 million in penalties and restitution, almost half of which was used to compensate the estimated 1,000 affected workers.¹⁴⁴ The companies were also required to pay for independent monitoring of their labor practices for up to three years.¹⁴⁵

The Massachusetts AG has investigated extensive child labor violations by several fast-food restaurant chains. Though state law has limitations on the hours minors can work, these restaurants were keeping young teenagers at work until midnight or even later on school nights.¹⁴⁶ Through the investigation, the AG's office uncovered thousands of violations at Chipotle, Wendy's and Qdoba, resulting in significant fines.¹⁴⁷

In another case, Illinois' AG Kwame Raoul filed suit against two meat processing companies, after those companies engaged in discriminatory practices against Black applicants and workers.¹⁴⁸ As a result of the lawsuit, the two companies agreed to pay civil penalties and to implement anti-bias procedures.¹⁴⁹ Meanwhile, the Minnesota AG office has an ongoing investigation of downtown St. Paul's largest landowner for failing to pay overtime to security guards.¹⁵⁰

A case in Washington illustrates a state acting to protect workers, even when the workers are at a federal facility. In 2018, Washington state passed a state law designed to make it easier for Hanford Nuclear Reservation workers exposed to radioactive waste to be compensated if they develop certain illnesses.¹⁵¹ The federal government challenged the law citing the

143. *Id.*

144. *Id.*

145. *Id.*

146. Katie Johnston, *Child Labor Violations, Especially at Fast-Food Chains, Pile Up in Mass.*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/business/child-labor-violations-piling-up-state/> [<https://perma.cc/TZ2A-J6RJ>]

147. *Id.*

148. Press Release, Illinois Attorney General, Attorney General Raoul Announces Consent Decrees to End Racial Discrimination in Hiring at Meat Processing Facility (Oct. 14, 2021), https://www.illinoisattorneygeneral.gov/pressroom/2021_10/20211014b.html [<https://perma.cc/73MU-KXW9>].

149. *Id.*

150. Press Release, Attorney General Ellison prevails at Supreme Court in effort to investigate wage theft allegations against downtown Saint Paul's largest landowner (December 22, 2021), https://www.ag.state.mn.us/Office/Communications/2021/12/22_MadisonEquities.asp#:~:text=The%20Attorney%20General%20first%20received,40%20hours%20in%20a%20week [<https://perma.cc/36ES-B8YA>].

151. Press Release, Washington State Office of the Attorney General, AG Ferguson: Washington Attorney General's Office defends Hanford workers; comp law at the Supreme Court today (April 18, 2022), <https://www.atg.wa.gov/news/news-releases/ag-ferguson->

“intergovernmental immunity” doctrine, a doctrine which prohibits states from regulating federal operations.¹⁵² The Washington state AG defended the law, arguing that states exercise broad discretion in applying their workers’ compensation schemes to federal projects. (The Supreme Court ultimately ruled against the state law,¹⁵³ although the state passed updated and similar legislation which has not been challenged.)¹⁵⁴

b. Federal Inaction in the Labor Space

As explained above, federal inaction on a particular issue heightens the likelihood that AGs will play a gap-filling role in that space.¹⁵⁵ In Congress, overall, research indicates that legislative deadlock has increased steadily. In 2014, reports showed that a stalemate had reached “three-quarters of the salient issues on Washington’s agenda.”¹⁵⁶

In the labor and environmental space, a congressional stalemate and insufficient federal enforcement resources are taking their toll. In terms of statutory protection of workers’ rights, Congress has been slow to act. The federal minimum wage is \$7.25 an hour even though 62% of Americans support raising the federal minimum wage to \$15 an hour.¹⁵⁷ Thirty states and Washington, D.C., as well as dozens of localities, already partially fill this gap by providing a higher minimum wage than the federal one.¹⁵⁸

washington-attorney-general-s-office-defends-hanford-workers-comp-law
[<https://perma.cc/7F8C-3PFM>].

152. *Id.*

153. *United States v. Washington*, 142 S.Ct. 1976, 1984 (2022).

154. Annette Cary, *U.S. Supreme Court Hears Arguments on WA State Law to Help Ill Hanford Nuclear Workers*, TRI-CITY HERALD (Apr. 19, 2022), <https://www.tri-cityherald.com/news/local/hanford/article260534117.html>.

155. See Gillian E. Metzger, *Agencies, Polarization and the States*, 115 COLUM. L. REV. 1739, 1772 (2015) (highlighting the role of states “in a world of polarized national politics and a gridlocked Congress.”).

156. Sarah A. Binder, *Polarized We Govern?*, CTR. FOR EFFECTIVE PUB. MGMT. AT BROOKINGS 17 (May 27, 2014) <https://www.brookings.edu/research/polarized-we-govern/> [<https://perma.cc/637G-ZL6V>].

157. Amina Dunn, *Most Americans support a \$15 federal minimum wage*, PEW RSCH. CTR. (Apr. 22, 2021), <https://www.pewresearch.org/fact-tank/2021/04/22/most-americans-support-a-15-federal-minimum-wage/> [<https://perma.cc/V87R-BZBZ>]; see also David Cooper et al., *Raising the Federal Minimum Wage to \$15 by 2025 Would Lift the Pay of 32 Million Workers*, ECON. POL’Y INST. 2 (Mar. 9, 2021), <https://www.epi.org/publication/raising-the-federal-minimum-wage-to-15-by-2025-would-lift-the-pay-of-32-million-workers/> [<https://perma.cc/PQ43-E46N>] (providing research showing that a \$15 minimum wage “would lift up to 3.7 million – including . . . 1.3 million children – out of poverty.”).

158. *Minimum Wage Tracker (illustration)*, ECON. POL’Y INST. (Jan. 1, 2022), <https://www.epi.org/minimum-wage-tracker/> [<https://perma.cc/RB3U-G8L3>].

Another example of Congress's inability to legislate in the labor space in a timely fashion is its lack of movement on the PRO Act, which is currently awaiting passage by the Senate.¹⁵⁹ The PRO Act would amend the National Labor Relations Act to address many of the shortcomings of current labor law.¹⁶⁰ Polls showed that 59% of likely voters support the PRO Act.¹⁶¹ Despite the need for changes to the law to address these new circumstances, Congress has been unable to move this legislation. In addition to the failure to update the law, staffing for federal labor agencies is insufficient. The staff and resources of the National Labor Relations Board, which enforces union-related laws, have declined despite an expanding national workforce, and the NLRB's funding has been effectively cut by 20% because of inflation in just the last decade, although a recent infusion will help stem the losses.¹⁶²

Reduced enforcement on the federal front is another feature of the gap. The U.S. Equal Employment Opportunity Commission (EEOC) investigates and files lawsuits to enforce laws against discrimination in the workplace.¹⁶³ Yet its staff and resources have also declined significantly over time, while, again, the workforce has grown.¹⁶⁴ In the U.S. Department of Labor, which enforces federal labor standards laws,¹⁶⁵ the number of investigators dedicated to wage-theft cases has declined to less than the number in place in the middle of the 20th century, although the country has seven times as many workers now as it did then.¹⁶⁶

159. H.R. 842, 117th Cong. (1st Sess. 2021).

160. Celine McNicholas et al., *How the PRO Act restores workers' right to unionize*, ECON. POL'Y INST. (Feb. 4, 2021), <https://www.epi.org/publication/pro-act-problem-solution-chart/> [https://perma.cc/N9GL-JKJX].

161. Gabby Birenbaum, *Poll: A Majority of Voters Support the PRO Act*, VOX (June 16, 2021, 12:00 PM), <https://www.vox.com/2021/6/16/22535274/poll-pro-act-unionization-majority-bipartisan> [https://perma.cc/73Q8-AS28].

162. Ihna Mangundayao & Celine McNicholas, *Congress Should Boost NLRB Funding to Protect Workers' Well-Being*, ECON. POL'Y INST.: WORKING ECONS. BLOG (Feb. 28, 2022, 2:52 AM), <https://www.epi.org/blog/congress-should-boost-nlr-b-funding-to-protect-workers-well-being/> [https://perma.cc/Q6YD-NCLY]; Daniel Wiessner, *U.S. budget bill includes first increase for the labor board since 2014*, REUTERS (Dec. 20, 2022), <https://www.reuters.com/legal/government/us-budget-bill-includes-first-increase-labor-board-since-2014-2022-12-20/> [https://perma.cc/4D4X-KWT4].

163. Overview, EEOC, <https://www.eeoc.gov/overview> [https://perma.cc/E3B2-Y8HR].

164. Yang & Liu, *supra* note 130, at 20 ("Since 1980, the U.S. workforce has increased by 50%, but the EEOC has a smaller budget today than in 1980, adjusted for inflation, and 42% fewer staff.").

165. *Frequently Asked Questions: What does the Department of Labor do?*, U.S. DEPT. OF LABOR, <https://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=478&topicid=9&subtopicid=151> [https://perma.cc/5Y5F-PHNS] (last visited July 11, 2022).

166. Levine, *supra* note 126 ("In 1948, when the United States had 23 million workers, the division had 1,000 investigators [to investigate wage theft]. Today, the U.S. has seven

Another hole in federal legislation concerns Title VII of the Civil Rights Act, which prohibits discrimination based on race, color, national origin, sex, or religion. Title VII only covers employers with fifteen or more employees, leaving employees of small employers without federal protection from discrimination. This is a significant number: “[a]s of 2017, over 12 million workers worked for firms with fewer than 10 employees. Across all industries in the United States, Title VII consistently excludes about 14% of the workforce from its protections.”¹⁶⁷ In contrast, thirty-seven states and Washington, D.C., as well as many cities, have adopted legislation that applies their state anti-discrimination laws to employers with fewer than fifteen employees.¹⁶⁸ State and local anti-discrimination laws are also in many instances more expansive, protecting groups excluded by federal law. More protective anti-discrimination, wage and hour, and other state worker protection laws, then, create an opportunity for AG action.

c. Limitations on Other Actors Who Might Address the Harm

Typically, unions help improve working conditions for members as well as non-members, leading to increased wages in industries where they are present and advocating for strong workplace protections. Unions also serve as on-site monitors of working conditions and labor compliance. Unions ordinarily might help “resolve wage and hour violations through private grievances and arbitration.”¹⁶⁹ But limitations in labor law and strong anti-union corporate campaigns have diminished membership in recent decades. As of 2019, only 6.2% of private sector workers were union members,¹⁷⁰ and the overall percentage of unionized workers (public and private sector) has fallen from 20% in 1983 to 10.3% in 2021.¹⁷¹

In addition, the rise of forced arbitration prevents many workers from bringing their cases to court. Non-governmental enforcement of workplace rights by private and non-profit attorneys has long been a pillar of employ-

times as many workers, but slightly fewer federal wage-and-hour investigators than it had 70 years ago.”).

167. Yang & Liu, *supra* note 130, at 23.

168. *Id.* at 25.

169. Romer-Friedman, *supra* note 140, at 507.

170. *Union Membership (Annual) News Release*, U.S. BUREAU OF LABOR STAT. (Jan. 22, 2019), https://www.bls.gov/news.release/archives/union2_01222020.pdf [https://perma.cc/JUE2-PLL2].

171. Ted Van Green, *Majorities of Adults See Decline of Union Membership as Bad for the U.S. and Working People*, PEW RSCH. CTR. (Feb. 18, 2022), <https://www.pewresearch.org/fact-tank/2022/02/18/majorities-of-adults-see-decline-of-union-membership-as-bad-for-the-u-s-and-working-people/> [https://perma.cc/B393-T3R6].

ment protections and enforcement; however, as a result of numerous extremely pro-arbitration Supreme Court cases, over half of all workers are currently covered by forced arbitration clauses, a number which is projected to reach 80% by 2024.¹⁷² The practices force cases out of court and make it less likely that private and non-profit attorneys will be able to play their longstanding private enforcement role,¹⁷³ creating an urgent need for greater public enforcement by state AGs and other government actors.

d. The Issues Affect Multiple States

The ability of AGs to band together in multistate actions is another factor that may contribute to a decision to take a role in filling the current gaps in labor protections. Labor issues often affect multiple states at once, whether that takes the form of employers that operate across state lines or working conditions that exist in several states.

Climate change is also affecting multiple states. In California, for example, climate change is increasing heat-related deaths, damaging coastlines, and increasing the risk of wildfires, just to name a few environmental and health concerns.¹⁷⁴ In Massachusetts, climate change is causing loss of coastlines among other concerns.¹⁷⁵ As a result, states have banded together on numerous occasions to bring lawsuits pushing the federal government to take stronger steps to address climate change. For example, just recently, AGs in California, New York, Pennsylvania, and thirteen other states, as well as local entities, sued the U.S. Postal Service after it refused to consider replacing its aging delivery fleet with electric vehicles.¹⁷⁶

172. HAMAJI ET AL., *supra* note 127, at 3.

173. David L. Noll, *Arbitration Conflicts*, 103 MINN. L. REV. 665, 682 (2018).

174. Complaint for Declaratory and Injunctive Relief at 10:2-10:7, State of California et al v. U.S. Postal Service et al, Docket No. 3:22-cv-02583 (N.D. Cal. Apr 28, 2022).

175. Massachusetts v. E.P.A., 549 U.S. 497, 524 (2007).

176. Complaint for Declaratory and Injunctive Relief at 2:23, State of California et al v. U.S. Postal Service et al, Docket No. 3:22-cv-02583 (N.D. Cal. Apr. 28, 2022). The Biden administration recently announced that the Postal Service will buy 66,000 electric vehicles. See Jacob Bogage, *Postal Service will electrify trucks by 2026 in climate win for Biden*, WASH. POST (Dec. 20, 2022), available at <https://www.washingtonpost.com/business/2022/12/20/usps-ev-vehicles/> [<https://perma.cc/MLV2-RGDZ>].

Additionally, California's AG led a coalition of 23 AGs to help defend EPA's car emission standards, after they were challenged by a different coalition of states.¹⁷⁷ EPA's rule is predicted to prevent 3 billion tons of greenhouse gas emissions from 2023 to 2026 by light-duty vehicles.¹⁷⁸

e. Opportunity for Lasting Impact

Involvement in just transition issues at this particular moment presents a unique opportunity for AGs to have impact. The climate crisis is inherently an issue of lasting impact; engaging workers, unions, and affected communities in a constructive manner will help ensure develop broad public support for the needed transition.

Moreover, the clean energy industry is currently still developing and is in its very early stages. Labor practices established now are likely to set the tone for years to come. If industries begin on a low-road path, with low wages, pay violations, misclassification, and unsafe workplaces, it will be more difficult to change this trajectory in the future once these practices are entrenched. For example, electronic vehicle manufacturer Tesla has been sued multiple times for violations of anti-discrimination laws¹⁷⁹ and it has an extensive record of workplace safety violations.¹⁸⁰ Permitting such low-road practices to proliferate creates a bad precedent for the emerging industry. Conversely, if AGs are able to intervene at this key moment to help create high-road and law-abiding jobs in the industry, the future impact of such action would likely be long-lasting and far-reaching. There is a present opportunity to nip any low-road practices in the bud and set a new industry on a positive trajectory going forward.

177. Press Release, State of California Department of Justice, Attorney General Bonta, Governor Newsom, *CARB Lead Coalition in Defense of Federal GHG Standards for Light-Duty Vehicles* (Mar. 8, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-governor-newsom-carb-lead-coalition-defense-federal-ghg> [<https://perma.cc/EV8Z-D586>].

178. *Id.*

179. Margot Roosevelt & Russ Mitchell, *Black Tesla Employees Describe a Culture of Racism: 'I was at my breaking point,'* L.A. TIMES (Mar. 25, 2022), <https://www.latimes.com/business/story/2022-03-25/black-tesla-employees-fremont-plant-racism-california-lawsuit> [<https://perma.cc/CT7E-54AP>]; Daniel Wiessner & Hyunjoo Jin, *California Sues Tesla Over Black Workers' Allegations of Discrimination*, REUTERS (Feb. 10, 2022), <https://www.reuters.com/business/california-agency-sues-tesla-over-alleged-discrimination-harassment-wsj-2022-02-10/> [<https://perma.cc/B8XC-VDM9>].

180. Alan Ohnsman, *Elon Musk Has Lots To Say About Workers At Tesla—Which Continues To Lead U.S. Carmakers In Safety Violations*, FORBES (Jun. 6, 2022), <https://www.forbes.com/sites/alanohnsman/2022/06/06/elon-musk-has-lots-to-say-about-workers-at-teslawhich-continues-to-lead-us-carmakers-in-safety-violations/> [<https://perma.cc/2BCR-2723>].

C. Possibilities for AG Engagement

A just transition in the clean energy sector holds the promise of more and better jobs, policies and court decisions that protect the public fisc and environment, policies that begin to right the wrongs wrought by a history of racial injustice, and policies that tackle climate change forcefully and with an urgency that matches the severity of the problem. But that type of transition is not guaranteed. Instead, climate and labor policy will need to coalesce around these goals and advocates will need to ensure that policies are enacted to accomplish both climate and labor priorities.¹⁸¹

With their many and varied tools, attorneys general have a potentially impactful role to play in this area. This Section addresses several recommendations that have been made for a just transition and describes opportunities for AG involvement. Depending upon the particular just transition issue, AGs may be able to enforce the law, provide guidance, advocate publicly, convene players, or simply use their bully pulpit to press for just transition goals.

Given that incentives for AG involvement are present, as discussed above, the goal of this Section is to offer a vision of how AGs can engage in the labor space to address this national issue, by surveying AG tools available to promote a just transition. The Section also offers possible areas for protecting workers generally from the already-existing impact of climate change.

1. Pushing for Good Jobs in the Clean Energy Sector

A number of recommendations have been made about how to improve conditions and prevent employer abuses in the growing clean energy sector, including increasing union density, promoting the use of project labor agreements, enforcing prevailing wage laws, and enforcing labor, safety and anti-discrimination protections. In addition, there are statutes that have been enacted in some states that contain provisions designed to promote a just transition. For each of these recommendations, there are clear opportunities for AGs to engage, within the boundaries created by preemption.¹⁸²

a. Unions

A primary recommendation for improving the quality of clean energy jobs is to increase unionization rates. Unions have significantly improved

181. See David J. Doorey, *Just Transitions Law: Putting Labour Law to Work on Climate Change*, 30 J. ENV'T L. & PRAC. 201, 207 (2017).

182. See *supra* text accompanying notes 132–135.

wages, benefits, workplace safety, and other working conditions for members and for all workers in the country.¹⁸³ Research shows that they can also help reduce gender and race inequities.¹⁸⁴ Moreover, without unions, workers have no clear avenue to effectively negotiate the conditions of their employment.¹⁸⁵ During the COVID-19 pandemic, for example, workers in unions were able to advocate for additional protections, including personal protective equipment and paid sick leave, while many nonunion workers who advocated for themselves risked retaliation or termination.¹⁸⁶ The ability to collectively negotiate over terms and conditions of employment will likely become more important as rising temperatures and other features of the climate crisis lead to uncertainty and hazardous working conditions in many industries.¹⁸⁷ Unions also help employers attract and retain higher-skilled workers, which improves the quality of work and makes it more efficient.¹⁸⁸ These benefits for employers can outweigh any potential increase in wages.¹⁸⁹

183. See Celine McNicholas et al., *supra* note 160; see generally Josh Bivens et al., *How Today's Unions Help Working People: Giving Workers the Power to Improve Their Jobs and Unrig the Economy*, ECON. POL'Y INST. (Aug. 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/> [<https://perma.cc/BP5N-JUXG>]; Kevin Cashman & Evan Butcher, *The Union Dividend: It Reaches Beyond Members*, CTR. FOR ECON. & POL'Y RSCH. (Sept. 10, 2015), <https://cepr.net/the-union-dividend-it-reaches-beyond-members/> [<https://perma.cc/3S2S-ZK45>] (surveying research showing that unions “presence and political power are likely used to push for policies that benefit all workers.”).

184. See Henry S. Farber et al., *Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data 1–2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 24587, 2021) (examining data on unions and income inequality). See also Natalie Spieveck, *Can labor unions help close the black-white wage gap?*, URBAN INST. (Feb. 1, 2019), <https://www.urban.org/urban-wire/can-labor-unions-help-close-black-white-wage-gap> [<https://perma.cc/ER95-Y7UN>]; Elise Gould & Celine McNicholas, *Unions Help Narrow the Gender Wage Gap*, ECON. POL'Y INST. (Apr. 3, 2017), <https://www.epi.org/blog/unions-help-narrow-the-gender-wage-gap/> [<https://perma.cc/JY96-LUXD>].

185. See McNicholas et al., *supra* note 160.

186. See Celine McNicholas et al., *Union Workers Had More Job Security During the Pandemic, but Unionization Remains Historically Low*, ECON. POL'Y INST. 2 (Jan 22, 2021), <https://files.epi.org/pdf/218638.pdf> [<https://perma.cc/QAH4-54P7>].

187. Sengupta, *supra* note 111; see generally David Wallace-Wells, *The Coronavirus Is a Preview of Our Climate-Change Future*, INTELLIGENCER (Apr. 8, 2020), <https://nymag.com/intelligencer/2020/04/the-coronavirus-is-a-preview-of-our-climate-change-future.html> [<https://perma.cc/P5GH-9P6A>] (describing increased health risks presented by the climate crisis).

188. Betony Jones, *Prevailing Wage in Solar Can Deliver Good Jobs While Keeping Growth on Track*, U.C. BERKELEY LAB. CTR. (Nov. 12, 2020), <https://laborcenter.berkeley.edu/prevailing-wage-in-solar-can-deliver-good-jobs-while-keeping-growth-on-track/> [<https://perma.cc/W7EG-LVAZ>].

189. *Id.*

Outdated labor laws though, most notably the National Labor Relations Act (NLRA), have led to a significant decline in national union density.¹⁹⁰ Although there is strong support for unionization,¹⁹¹ there are serious obstacles to workers forming unions under current law; in addition, illegal retaliation and interference by employers are common during union campaigns.¹⁹² As explained, there are constraints on what AGs can do to directly enforce the laws governing unionization in the private sector, because the NLRA has broad preemption, limiting what states and localities can do in this area.¹⁹³

Nonetheless, there are actions that AGs can take in this area that do not raise concerns about NLRA preemption.

- AGs can conduct know-your-rights campaigns to educate workers, including those in green economy jobs, about their NLRA rights to organize and form a union. The White House Task Force on Worker Organizing and Empowerment issued its first report in February 2022, and it recommended an extensive outreach and public education campaign to make sure that workers throughout the country know about their organizing and union rights. The U.S. Department of Labor has already begun to undertake such a campaign, launching a “Unions 101” website. AGs generally have a high public profile in their states; they are in close touch with constituents, and they often have effective intergovernmental, communications, and outreach teams. Even though they do not enforce the NLRA, AGs are

190. See *supra* text accompanying notes 131–135.

191. Drew Desilver, *Most Americans view unions favorably, though few workers belong to one*, PEW RSCH. CTR. (Aug. 30, 2018), <https://www.pewresearch.org/fact-tank/2018/08/30/union-membership-2/> [<https://perma.cc/7LFH-5J47>].

192. Heidi Shierholz, et al., *Latest Data Release on Unionization Is a Wake-up Call to Lawmakers*, ECON. POL’Y INST. (Jan. 20, 2022), <https://www.epi.org/publication/latest-data-release-on-unionization-is-a-wake-up-call-to-lawmakers> [<https://perma.cc/JA9A-BBU4>]; Celine McNicholas et al., *Why Workers Need the Protecting the Right to Organize Act*, ECON. POL’Y INST. (Feb. 9, 2021), <https://www.epi.org/publication/why-workers-need-the-pro-act-fact-sheet/#:~:text=PRO%20Act%20solution%3A%20The%20PRO,suffer%20other%20serious%20economic%20harm> [<https://perma.cc/2YEJ-RHL4>] (documenting shortcomings in current law that can be “exploited by anti-union employers”); Celine McNicholas et al., *Unlawful: U.S. Employers are Charged with Violating Federal Law in 41.5% of All Union Election Campaigns*, ECON. POL’Y INST. (Dec. 11, 2019), <https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/> [<https://perma.cc/J5MK-5KS2>] (presenting data on employers charged with interfering in union elections).

193. See *Machinists v. Wis. Emp. Rel. Comm’n*, 427 U.S. 132, 149 (1976); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959); see also Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153, 1165–69 (2011) (describing cases following *Machinists* and *Garmon*).

well suited to help inform workers within their states about their rights to form a union, and AGs could consider focusing such efforts on clean energy industry workforces generally. Although NLRA preemption is broad, it is highly unlikely that a general know-your-rights education program, unrelated to any particular union campaign, would be preempted.

- AGs can develop relationships with unions, and can respond promptly when unions refer cases involving violations of minimum wage, prevailing wage, or other provisions of state law. For example, New York AG Letitia James recently obtained restitution and reinstatement for workers unlawfully fired during the pandemic, in a case referred by a union.¹⁹⁴
- AGs can use their public presence to show solidarity with workers trying to unionize, as New York AG James did recently in a statement supporting Starbucks employees who had successfully unionized in Buffalo and are trying to do so elsewhere in the state.¹⁹⁵
- To the extent that there are discussions among state policymakers about creating public (government) jobs within clean energy industries or the green economy, state AGs can support this position. And to the extent that a given state does not permit unionizing by public employees working for state or local government, AGs can support law reform allowing them to organize, given the benefits that collective bargaining offers public employers as well as public employees.¹⁹⁶
- AGs can advocate for labor law reform at the federal level. For example, seventeen AGs formed a coalition to push Congress to enact the PRO Act, explaining that the new statute would have restored the “original purpose of encouraging unionization.”¹⁹⁷

194. Press Release, N.Y. State Off. of the Att’y Gen., Attorney General James Protects Long Island Workers Unlawfully Fired During COVID-19 Pandemic (Sept. 22, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-jamesprotects-long-island-workers-unlawfully-fired-during-covid> [<https://perma.cc/6VDP-YAUQ>].

195. Press Release, N.Y. State Off. of the Att’y Gen., Attorney General James Applauds Buffalo Starbucks Employees’ for Forming Company’s First Union in the Nation (Dec. 10, 2021), <https://ag.ny.gov/press-release/2021/attorney-generaljames-applauds-buffalo-starbucks-employees-forming-companys> [<https://perma.cc/KU6W-29VF>].

196. Brief for the State of Ca. as Amicus Curiae Supporting Affirmance at 11, *Janus v. AFSCME*, Council 31, 138 S. Ct. 2448 (2018) (No. 16-1466) (explaining that collective bargaining “facilitates the effective identification and resolution or mitigation of issues that could otherwise generate dissatisfaction in the workplace.”).

197. State of Cal. Off. of the Att’y Gen, *supra* note 95.

b. Project Labor Agreements

Another tool for ensuring high-road working conditions, as well as facilitating union density in clean energy jobs and jobsites, is the use of project labor agreements (PLAs).¹⁹⁸ PLAs are a type of contract used in the construction industry to set the terms and conditions of employment on large projects of long duration and design complexity. They are generally negotiated between the owner or managing entity of a construction project and a building and construction trades council (a grouping of local construction unions).¹⁹⁹ They operate a lot like a “job-site constitution,” establishing worksite conditions, project execution and protocol to resolve labor disputes without resorting to strikes and lockouts. Many PLAs include community workforce goals that increase access to construction jobs for veterans, local residents, disadvantaged workers, and/or small businesses.²⁰⁰ PLAs govern the terms and conditions of employment for all workers—union and nonunion—on a given project. They can be used to protect taxpayers by eliminating costly delays due to labor conflicts or shortages of skilled workers. Sometimes PLAs require exclusive use of union labor, while other times they require a set percentage of labor to be conducted by union workers. For example, the developers of Vineyard Wind—a recently-permitted utility-scale offshore wind project that will be the first of its kind in the United States—signed a PLA²⁰¹ with a coalition of Massachusetts unions and agreed to hire union workers for fifty percent of the jobs created by the project. In New York and New Jersey, a recently-announced federal offshore wind lease includes stipulations that encourage PLAs, in addition to incentivizing local employment and requiring input for affected communities.²⁰²

198. See generally Matthew M. Bodah & Dale Belman, *Building Better: A Look at Best Practices for the Design of Project Labor Agreements*, ECON. POL’Y INST. (Aug. 12, 2010), https://www.epi.org/publication/building_better_a_look_at_best_practices_for_the_design_of_project_labor/ [https://perma.cc/6YKX-DW4T].

199. See *id.* (defining PLAs).

200. *Id.* (discussing PLAs incorporating community workforce provisions).

201. Benjamin Storrow, *Unions Will Help Build Vineyard Wind, A Win for McCarthy*, E&E NEWS (July 19, 2021), <https://www.eenews.net/articles/unions-will-help-build-vineyard-wind-a-win-for-mccarthy/> [https://perma.cc/M5R2-TZ5V].

202. Atlantic Wind Lease Sale 8 (ATLW-8) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) in the New York (NY) Bight-Final Sale Notice, 87 Fed. Reg. 2446 (Jan. 14, 2022); see also Press Release, AFL-CIO N.Y.C. Cent. Lab. Council, Climate Jobs NY Update: Biden Administration Announces Historic Auction for New Offshore Wind Lease Areas in the New York Bight (Jan. 14, 2022), <https://www.nycclc.org/news/2022-01/climate-jobs-ny-update-biden-administration-announces-historic-auction-new-offshore> [https://perma.cc/89Y3-NU8Q].

Many states have policies promoting the use of PLAs in state-funded projects, but some restrict their use.²⁰³

AGs can encourage use of project labor agreements in their states, and they can also conduct any enforcement that is appropriate under such agreements. Some states do not allow PLAs; in such cases, AGs can advocate for changing the law to permit them.²⁰⁴ If PLAs are allowed, but not favored, AGs can advocate for policies that favor them. And to the extent PLAs include an enforcement role for AGs, AGs can respond to any complaints about the implementation of the agreements. Overall, AGs can urge use of PLAs in relation to clean energy projects.

c. Prevailing Wage

Another mechanism for ensuring good clean-energy jobs is requiring payment of prevailing wages for the work.²⁰⁵ Prevailing wage laws require government contractors to pay a wage and benefit rate based on similarly employed employees in a given geographic region.²⁰⁶ These laws ensure that contractors cannot gain an unfair advantage in bidding for government contracts by paying sub-par wages or using low-road employment practices.²⁰⁷ Studies have found that prevailing wage laws have a positive economic impact.²⁰⁸

203. See Marni von Wilpert, *City Governments are Raising Standards for Working People—and State Legislators Are Lowering Them Back Down*, ECON. POL'Y INST. (Aug. 26, 2017), <https://www.epi.org/publication/city-governments-are-raising-standards-for-working-people-and-state-legislators-are-lowering-them-back-down/> [<https://perma.cc/SC7A-6N87>].

204. See *id.*

205. See James T. Callahan, *Green future needs to be built with union jobs and prevailing wage*, THE HILL (May 11, 2021), <https://thehill.com/opinion/energy-environment/552850-green-future-needs-to-be-built-with-union-jobs-and-prevailing-wage?rl=1> [<https://perma.cc/486X-N69T>]; see also Aurelia Glass, et al., *Prevailing Wages Can Build Good Jobs Into America's Electric Vehicle Industry*, CTR. FOR AM. PROGRESS (Jul. 6, 2022), <https://www.americanprogress.org/article/prevailing-wages-can-build-good-jobs-into-americas-electric-vehicle-industry/> [<https://perma.cc/PXL2-WFKH>].

206. See *generally Prevailing Wage*, ILL. ECON. POL'Y INST., <https://illinoisepi.org/focus-areas/prevailing-wage/> [<https://perma.cc/7ZRX-ZPLZ>]; Nooshin Mahalia, *Prevailing Wages and Government Contracting Costs*, ECON. POL'Y INST. (July 3, 2008), <https://www.epi.org/publication/bp215/> [<https://perma.cc/7QCF-J27Q>]; KARLA WALTER ET AL., CTR. FOR AM. PROGRESS, A HOW-TO GUIDE FOR STRENGTHENING STATE AND LOCAL PREVAILING WAGE LAWS 8 (2020).

207. Malkie Wall et al., *Prevailing Wages: Frequently Asked Questions*, CTR. FOR AM. PROGRESS 1–2 (Dec. 22, 2020), <https://www.americanprogress.org/article/prevailing-wages-frequently-asked-questions/> [<https://perma.cc/XLR2-A6KW>].

208. Frank Manzo IV, *Minnesota Wins with Prevailing Wage*, MIDWEST ECON. POL'Y INST. (Jul. 19, 2018), <https://midwestepi.org/2018/07/19/minnesota-wins-with-prevailing-wage/amp/> [<https://perma.cc/P4EM-B7BG>]; see also Frank Manzo IV, *NEW STUDY: Wisconsin Prevailing Wage Repeal Reduced Wages, Exported Jobs and Tax Dollars Out of State, and*

AGs can encourage the designation of clean energy jobs as public work subject to prevailing wage requirements, and where this occurs, AGs can prioritize civil and criminal enforcement of prevailing wage laws in these industries. AGs can also urge client agencies and state courts to expansively interpret the definition of public work. Again, as discussed below, AGs can also bring enforcement actions that make use of the maximum available statutory authority.

d. Labor and Safety Protections

Another policy priority for ensuring a just transition is enforcing worker protections and ensuring workplace safety in the emerging jobs.²⁰⁹

AGs can prioritize enforcement of basic labor standards in clean energy industry, including minimum wage and overtime. AGs can also enforce state-level paid sick leave, prevailing wage, and anti-retaliation laws where they exist.

As the climate crisis accelerates, impacts such as deadly heat,²¹⁰ unhealthy air quality,²¹¹ and dangerous flooding²¹² will become more severe; many industries, including the clean energy industry, will have to adapt to changing conditions. Not only are these extreme conditions a workplace hazard in and of themselves, but they also exacerbate other hazards by increasing the likelihood of accidents and error.²¹³ In response to these developments, AGs can also enforce workplace safety laws, subject to the limitations of OSHA preemption.²¹⁴

Failed to Deliver Any Cost Savings, MIDWEST ECON. POL'Y INST. (Oct. 2, 2020), <https://midwestepi.org/2020/10/02/new-study-wisconsin-prevailing-wage-repeal-reduced-wages-exported-jobs-and-tax-dollars-out-of-state-and-failed-to-deliver-any-cost-savings/amp/> [<https://perma.cc/P8Z5-G4PN>].

209. David Michaels & Robert Bullard, *Environmental Justice Is Essential in the Workplace and at Home*, THE NATION (Oct. 22, 2021), <https://www.thenation.com/article/economy/workplace-environmental-justice/> [<https://perma.cc/AM7U-ZJYD>] (“No worker should be forced to choose between an unsafe job and unemployment.”).

210. See Sengupta, *supra* note 111.

211. Matthew Brown, *EXPLAINER: As wildfire smoke spreads, who's at risk?*, AP NEWS (July 22, 2021), <https://apnews.com/article/canada-science-health-environment-and-nature-coronavirus-pandemic-22599eded88b808881b86c22505136a5> [<https://perma.cc/ALA7-MPXH>].

212. Christopher Flavelle et al., *New Data Reveals Hidden Flood Risk Across America*, N.Y. TIMES (June 29, 2020), <https://www.nytimes.com/interactive/2020/06/29/climate/hidden-flood-risk-maps.html> [<https://perma.cc/8RML-67MA>].

213. R. Jisung Park et al., *Temperature, Workplace Safety, and Labor Market Inequality 2–3* (July 14, 2021) (unpublished Working paper series) (on file with Wash. Ctr. for Equitable Growth).

214. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 99–100 (1992); *Steel Inst. of New York v. City of New York*, 716 F.3d 31, 34 (2d Cir. 2013). JANE FLANAGAN ET AL., HARV. L. SCH.:

Many companies attempt to avoid compliance with labor laws by wrongly classifying workers who should be employees as independent contractors.²¹⁵ By misclassifying employees as independent contractors, workers are “denied [access] to critical benefits and labor standards protections they are entitled to by law,” such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces.²¹⁶ Such employer practices profoundly harm the quality of jobs in an industry.

AGs have a role in these areas as well. They can prioritize civil and, where applicable, criminal enforcement of misclassification, payroll fraud, and basic labor standards laws in the green industry. AGs can also push for and defend stronger statutes related to misclassification. Several AGs have been extremely active in enforcing workers’ rights laws and combating misclassification in a number of industries.²¹⁷ This can be made a priority in the clean energy space as well. Ensuring compliance with minimum wage, overtime, misclassification, and other basic labor standard laws could be particularly impactful in the clean energy industry, since this industry is still nascent.

And in line with a general renewed focus among anti-trust enforcers on labor market competition, AG offices’ anti-trust bureaus can monitor and prioritize any potential labor-related anti-trust violations in the emerging renewable energy industries, such as employer collusion regarding worker wages, mergers that lead to monopsony or otherwise adversely impact employees’ working conditions, and employer abuse of no-poach or non-compete agreements.²¹⁸

AGs can also enforce anti-discrimination and civil rights laws in relation to renewable energy employers. Racial equity considerations are an important part of a just transition; this includes ensuring that past patterns of workplace discrimination do not persist and that communities adversely af-

LAB. & WORKLIFE PROGRAM & NAT’L EMP. L. PROJECT, HOW STATES AND LOCALITIES CAN PROTECT WORKPLACE SAFETY AND HEALTH 4–6 (2020).

215. Françoise Carré, *(In)dependent Contractor Misclassification*, ECON. POL’Y INST. (June 8, 2015), <https://www.epi.org/publication/independent-contractor-misclassification/> [https://perma.cc/A9VZ-WS9F].

216. *Misclassification of Employees as Independent Contractors*, U.S. DEP’T OF LABOR, <https://www.dol.gov/agencies/whd/flsa/misclassification> [https://perma.cc/28L4-XBUA]; see also *supra* text accompanying notes 72–75 (describing misclassification further and providing examples of cases that AGs have brought against employers for engaging in this illegal practice).

217. See *supra* text accompanying notes 72–75 (describing examples of actions AGs have brought in response to these types of violations).

218. U.S. DEP’T OF TREAS., THE STATE OF LABOR MARKET COMPETITION 54–55 (2022).

affected by climate change and past environmental injustices benefit from opportunities in the new green energy industries. Many AGs have brought cases to address employment discrimination. For example, the New York AG in 2020 reached a \$1.5 million settlement involving a construction company with a pattern of “severe sexual harassment” against women, mostly women of color; the settlement also required the company to hire an outside monitor for three years.²¹⁹ The Illinois AG obtained consent decrees to end “a brazen pattern of discrimination” based on race by a meat processing company and a temporary staffing agency it used.²²⁰ And New Jersey’s AG in 2021 announced a set of broad initiatives to promote racial justice.²²¹ As with wage theft, misclassification, and other abusive labor practices, AGs can work to ensure racial equity in the clean energy sector.

e. Defending State Agencies

Illinois,²²² Maryland,²²³ and New York²²⁴ have all recently passed legislation focused on reducing greenhouse gas emissions and on protecting workers in the affected industries. State agencies have already started implementing these laws and AGs can play a role in advising their agencies on that implementation. New York, for example, recently denied two permits under its new climate law²²⁵ and has already defeated a lawsuit challenging one of those denials.²²⁶ New York’s AG will now have the job of defending

219. Press Release, N.Y. State Off. of the Att’y Gen., Attorney General James Delivers \$1.5 Million to Survivors of Sexual Harassment and Retaliation in Construction Industry (July 13, 2020), <https://ag.ny.gov/press-release/2020/attorneygeneral-james-delivers-15-million-survivors-sexual-harassment-and> [<https://perma.cc/UY8F-M9FB>].

220. Press Release, Ill. Att’y Gen., Attorney General Raoul Announces Consent Decrees to End Racial Discrimination in Hiring at Meat Processing Facility (Oct. 14, 2021), https://www.illinoisattorneygeneral.gov/pressroom/2021_10/20211014b.html [<https://perma.cc/SMQ8-TC4G>].

221. Noah Cohen, *Acting Attorney General Announces Racial Justice Efforts, Anti-discrimination Policy for 720K Workers*, NJ.COM (Dec. 19, 2021), <https://www.nj.com/news/2021/12/ag-announces-racial-justice-efforts-anti-discrimination-policy-for-720k-workers.html> [<https://perma.cc/C3GH-KNHP>].

222. See S.B. 2408, 102nd Gen. Assemb. (Ill. 2021).

223. See S.B. 0516, 439th Leg., Reg. Sess. (Md. 2019).

224. See N.Y. ENV’T CONSERV. LAW § 75-0107 (McKinney 2020).

225. Marie J. French, *New York denies gas plant permits in first-ever decision citing climate law*, POLITICO (Oct. 27, 2021), <https://www.politico.com/states/new-york/albany/story/2021/10/27/hochul-administration-denies-permits-for-two-gas-plants-under-new-climate-law-1392062> [<https://perma.cc/KK36-T9LF>].

226. *Danskammer Energy, LLC v. N.Y. State Dept. of Env’tl. Conservation*, No. EF008396-2021, 2022 WL 2092580 (Sup Ct. June 8, 2022).

its agencies' decisions.²²⁷ When it comes to implementation of the worker protections, such as the prevailing wage and project labor agreement requirements in several projects recently announced by New York,²²⁸ AGs will be on the frontlines to handle any complaints about the implementation of those programs as well and to defend state policies promoting a just transition.

2. A Just Transition Away from Fossil Fuel

Recommendations have also been made to address the needs of a different set of workers: those in the fossil fuel industry, who are facing potential unemployment and dislocation as the economy changes. With regard to this challenge, AGs can advocate on behalf of laid-off workers in a bankruptcy and use their bully pulpit to push for more robust and protective state-level and federal programs, as well as monitoring spending on programs meant to help workers in this area.

a. Law Enforcement

Many worker protections are relevant to the fossil fuel industry as well as to the clean energy industry, such as wage protection laws, laws curbing worker misclassification, environmental and workplace safety statutes, and more. AGs can prioritize civil and, where applicable, criminal enforcement of these laws in the fossil fuel industry, just like in the renewable energy industry.

Where there are layoffs or closures, additional protections for workers can be enforced. The federal WARN Act requires employers with more than 100 employees to give sixty days' notice before a plant closure or mass layoff.²²⁹ Some states have comparable laws that go further. For example, New York's WARN Act requires employers with fifty or more employees to

227. See also Press Release, N.Y. State Off. of the Att'y Gen., On Earth Day 2021, Attorney General James Highlights Long Island and New York City Environmental Accomplishments (Apr. 22, 2021), <https://ag.ny.gov/press-release/2021/earth-day-2021-attorney-general-james-highlights-long-island-and-new-york-city> [<https://perma.cc/2429-9AZG>] (explaining that the AG is "actively engaged in assisting agencies with the implementation of CLCPA to ensure it meets its goal of cutting greenhouse gas emissions and fostering a just and equitable transition to a green economy in New York.").

228. *Governor Hochul Announces Key Offshore Wind Milestone as Contracts for Empire Wind 2 and Beacon Wind Projects Are Finalized*, N.Y. STATE GOVERNOR KATCHY HOCHUL (Jan. 14, 2022), <https://www.governor.ny.gov/news/governor-hochul-announces-key-offshore-wind-milestone-contracts-empire-wind-2-and-beacon-wind> [<https://perma.cc/XV9Q-7GR2>].

229. 29 U.S.C. § 2102(a) (2015); see *Sullivan v. Nine Mile Mining, Inc.*, No. 2:13CV00040, 2014 WL 4385780, at *1 (W.D. Va. Sept. 4, 2014) (holding that a coal company with an employer was covered by the act).

provide 90 days' notice before a mass layoff or closure.²³⁰ Though there is at least some case law finding that states may not enforce the federal statute,²³¹ states can enforce their own state-level WARN Acts; AGs can either directly bring such cases or represent enforcement agencies in court, depending on their jurisdiction. For example, New York's WARN Act authorizes the state Department of Labor to enforce it²³² and the agency has done so.²³³

AGs can educate workers in the fossil fuel industry specifically about their rights, respond to complaints from workers, and work with the state legislature and agencies to improve enforcement and worker protection standards.

b. Policy Advocacy and Public Education

Advocates have developed policy recommendations to address the needs of fossil fuel industry workers.²³⁴ AGs can advocate at the state and federal level for these policies, such as programs to assist workers and communities dependent on the coal industry.

AGs can also educate workers, the public and business community about existing programs available to them, and advocate for such programs where they do not exist. These include grant opportunities or funding for training, workforce development, job search support, local business and economic development, and environmental remediation, among other programs. To the extent that public funds are allocated to address the needs of transitioning away from fossil fuel, AGs can ensure that these funds are properly spent and enforce False Claims Act or other laws, where available and appropriate, to ensure proper use. AGs have a long history of enforcing

230. N.Y. LAB. LAW § 860-b (McKinney 2020); *see also* *Workplace Rights FAQs: Job Termination*, N.Y. STATE OFF. OF THE ATT'Y GEN., <https://ag.ny.gov/job-termination> [<https://perma.cc/3PPE-D7RV>].

231. *See* *Cashman v. Dolce Int'l/Hartford, Inc.*, 225 F.R.D. 73, 79 (D. Conn. 2004) (holding that states do not have standing to enforce the WARN Act); *see also* *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 544 (1996) (holding that unions have standing to sue on behalf of members).

232. N.Y. LAB. LAW § 860-f (McKinney 2009).

233. *See In re Saint Vincent's Cath. Med. Ctrs. of N.Y.*, 445 B.R. 264, 266 (Bankr. S.D.N.Y. 2011) (describing a claim brought by the Department of Labor).

234. *See, e.g.*, BlueGreen Alliance, *State-Based Policies to Build a Cleaner, Safer, More Equitable Economy: A Policy Toolkit* (July 2020), https://www.bluegreenalliance.org/wp-content/uploads/2020/07/StatePolicyToolkit_Report2020_vFINAL.pdf [<https://perma.cc/7TDT-JXX8>]; *Climate Jobs National Resource Center*, <https://www.cjnrc.org/> [<https://perma.cc/YUZ4-ZJ5F>].

their states' False Claims Acts and can use their authority to root out any fraud in the expenditures of public money in this area.²³⁵

c. Bankruptcy-Related Advocacy

In the fossil fuel sector, protections during a bankruptcy can be a significant issue both for workers and the environment. In mid-2019, Blackjewel, a company with coal mines in Kentucky, Virginia, and West Virginia filed for bankruptcy in the U.S. District Court for the Southern District of West Virginia.²³⁶ The company also failed to pay the wages of hundreds of coal miners, leading to a two-month standoff in which workers camped out on the train tracks to block the last shipment of coal offsite.²³⁷ The approved bankruptcy liquidation plan authorizes the company to abandon hundreds of mines without having restored the landscape, remediated unsafe conditions, or set aside funding to ensure that cleanup is possible.²³⁸ To help avoid the devastating impacts resulting from a poorly executed bankruptcy, state AGs and their client agencies can learn lessons from the Blackjewel example, and take steps to protect workers and the environment at multiple stages of the bankruptcy proceedings, including before the proceedings even start.

As an initial matter, states and AGs are likely to be able to play an important role in bankruptcy proceedings. Parties must show a pecuniary interest in order to have a say in the bankruptcy proceeding,²³⁹ and state government should be, and would almost certainly be, afforded a formal role as a party.²⁴⁰ State government, including agencies represented by their attorneys general, will likely shoulder significant financial burdens as a result

235. See, e.g., Press Release, N.Y. State Off. of the Att'y Gen., Attorney General James Recovers More Than \$1.6 Million from Government Contractor That Skimmed Funds from State Public-Works Projects (Mar. 19, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-recovers-more-16-million-government-contractor-skimmed> [<https://perma.cc/GZA8-HXUP>].

236. *In re Blackjewel L.L.C.*, No. 19-30289, 2020 WL 7348228, at *1 (Bankr. S.D. W. Va. 2019), *aff'd*, 2021 WL 2667511 (S.D. W. Va. June 29, 2021).

237. Mihir Zaveri, *Blackjewel Coal Miners to Get Millions in Back Pay After Train Blockade*, N.Y. TIMES (Oct. 24, 2019), <https://www.nytimes.com/2019/10/24/us/blackjewel-coal-miners.html> [<https://perma.cc/8SMZ-9NY5>].

238. See James Bruggers, *A Bankruptcy Judge Lets Blackjewel Shed Coal Mine Responsibilities in a Case With National Implications*, INSIDE CLIMATE NEWS (Mar. 19, 2021), <https://insideclimatenews.org/news/19032021/a-bankruptcy-judge-lets-blackjewel-shed-coal-mine-responsibilities-in-a-case-with-national-implications/> [<https://perma.cc/5QKT-BHMZ>].

239. See *In re Roman Cath. Church of Archdiocese of Santa Fe*, No. 18-13027-t11, 2021 WL 4943473, at *3 (Bankr. D. N.M. 2021).

240. See Joshua Macey & Jackson Salovaara, *Bankruptcy as Bailout: Coal Company Insolvency and the Erosion of Federal Law*, 71 STAN. L. REV. 879, 884 n.15 (2019).

of the company closing. Without an adequate cleanup plan, states can be left with the liability for cleanup, demonstrating a pecuniary interest in the proceeding. In addition, during bankruptcy, all other cases involving the company are automatically stayed²⁴¹ except cases where regulators are exercising their enforcement and regulatory powers.²⁴² Though the regulator or enforcer will likely not be able to obtain damages in those other, non-bankruptcy proceedings, the regulator or enforcer could get injunctive relief, which provides another basis for giving the government a seat at the table in the bankruptcy.

Once a company has filed for bankruptcy protection, there are several stages where an AG can advocate for workers and the environment, as follows:

- Must the company liquidate its holdings or can it reorganize? To reorganize, a company must show that it can comply with non-bankruptcy law including wage laws and environmental laws. An AG with concerns about such compliance could press this issue in bankruptcy court.²⁴³ In 2019, for example, the Kentucky and Virginia AGs urged the U.S. Trustee²⁴⁴ to pay Blackjewel's workers when the company

241. 11 U.S.C. § 362 (2020).

242. 11 U.S.C. § 362(b)(4) (2020); *see, e.g., In re SCBA Liquidation, Inc.*, 489 B.R. 666, 682 (Bankr. W.D. Mich. 2013) ("Under these standards, an action will only be exempt from the automatic stay as an exercise of police or regulatory powers if the action has been instituted to effectuate the public policy goals of the governmental entity, as opposed to actions instituted to protect the entity's pecuniary interest in the debtor's property or to adjudicate private rights [A]n action will be regarded as outside the police power exception when it incidentally serves public interests but more substantially adjudicates private rights."); *see Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005); *see also In re Iams Funeral Home, Inc.*, No. 07-1397, 2007 WL 4358291, at *4 (Bankr. N.D. W.Va. 2007) (holding that the Attorney General of West Virginia's claims were exempted from the automatic stay).

243. 28 U.S.C. § 959(b).

244. *U.S. Trustee Program*, U.S. DEP'T OF JUST., <https://www.justice.gov/ust> [<https://perma.cc/LJ38-PRUY>] (describing that the U.S. Trustee Program is part of the Department of Justice and it oversees "administration of bankruptcy cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. § 101.").

went bankrupt.²⁴⁵ Kentucky AG Beshear opened his own investigation as well.²⁴⁶ Eventually, the U.S. Department of Labor got involved and Blackjewel paid its workers over \$5 million in backpay.²⁴⁷

- If the company must liquidate, can it abandon its properties? What must be done to ensure that any abandonment does not damage the public's health and safety?²⁴⁸ An AG can advocate in bankruptcy court for adequate environmental protections as a condition of abandonment, and also for protection of workers' pensions. For example, a bipartisan coalition of attorneys general recently filed an amicus brief in the Supreme Court in support of certiorari to address the decision by Delphi Corporation, an auto parts manufacturer and supplier, to deny pension benefits to its employees after entering bankruptcy.²⁴⁹ They argued that the company had violated employees' rights. Ultimately, the Supreme Court denied the writ of certiorari.²⁵⁰
- What priority should various claims be accorded? In bankruptcy proceedings, secured claims are paid first, then administrative claims, and finally unsecured claims.²⁵¹ A debtor's assets may be exhausted before any unsecured claims are paid. AGs may have an opportunity to argue that pension, retirement, healthcare-related, or environmental claims are administrative rather than unsecured in order to

245. See Letter from Mark R. Herring, Att'y Gen. of Va., & Andy Beshear, Att'y Gen. of Ky., to Debra A. Wertman, Assistant U.S. Tr. (July 16, 2019).

246. Sarah Ladd, *Andy Beshear asks federal government to get former Blackjewel miners paid now*, COURIER J. (Aug. 13, 2019), <https://www.courier-journal.com/story/news/local/2019/08/13/andy-beshear-asks-federal-government-help-get-kentucky-miners-paid/2002181001/> [<https://perma.cc/TF29-KNRS>].

247. Meghna Chakrabarti & Hilary McQuilkin, *Following Up: The Kentucky Coal Miners Who Set Up A Railroad Blockade*, WBUR (Dec. 9, 2019), <https://www.wbur.org/on-point/2019/12/09/coal-miners-kentucky-blackjewel> [<https://perma.cc/A5AU-W56J>].

248. See generally *Midlantic Nat'l Bank v. New Jersey Dep't of Env't Prot.*, 474 U.S. 494, 507 (1986) (holding that Bankruptcy Court "does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public's health and safety."). But see *In re Smith-Douglass, Inc.*, 856 F.2d 12, 17 (4th Cir. 1988) (allowing abandonment where cleanup needs were unclear and there were insufficient assets to fund a cleanup).

249. Press Release, Ohio Att'y Gen., AG Yost Joins Coalition to Protect Delphi Pension Recipients (Nov. 4, 2021), <https://www.ohioattorneygeneral.gov/Media/News-Releases/November-2021/AG-Yost-Joins-Coalition-to-Protect-Delphi-Pension> [<https://perma.cc/5RJF-262D>]; see Brief for Michigan et al. as Amici Curiae States Supporting Petitioners, *Black v. Pension Benefit Guar. Corp.*, 142 S.Ct. 874 (2022) (No. 21-495), 2021 WL 5166570.

250. See Rick Archer, *High Court Won't Hear Delphi Retirees' Pension Plan Suit*, LAW360 (Jan. 18, 2022), <https://www.law360.com/articles/1456100/high-court-won-t-hear-delphi-retirees-pension-plan-suit> [<https://perma.cc/E4LK-NW7W>].

251. 11 U.S.C. § 507 (2021).

make it more likely that such claims would ultimately be paid.²⁵² To make such arguments, AGs may need to develop detailed information and legal arguments. For example, in relation to environmental concerns, an AG advocate may need to obtain an assessment of the future cleanup expenses, as well as an assessment and valuation of any health concerns related to site conditions.²⁵³ During liquidation negotiations, AGs could advocate for a trust to address foreseeable future cleanup or health-related costs, retiree health benefits, or pensions that must be paid. Such advocacy is particularly crucial in an industry like coal mining, in which employees are routinely exposed to disease-causing materials.²⁵⁴ Without strong advocacy by state AGs or others, bankruptcy negotiations can end in agreements that leave workers' interests unprotected. In 2019, for example, a bankruptcy judge prioritized²⁵⁵ a mine's restructuring plans over employee benefits, in a move criticized by experts and activists.²⁵⁶ This example highlights how crucial advocacy on behalf of workers is in bankruptcy court.

- Are there any inappropriate attempts to skirt liability through transfers? In reviewing a bankruptcy reorganization or liquidation plan, an AG can monitor any auctions in which permits are transferred to a new entity, which may itself be a polluter, and which may lack the resources to satisfy all assumed obligations. An AG can also monitor for potential fraudulent creation of subsidiaries: a reorganization could involve placing all of the environmental, labor, and other liabilities into an underfunded new company, to the detriment of workers and the environment. For example, in 2007, Peabody Energy, already facing market pressure, transferred its pension liabilities to a spinoff

252. Macey & Salovaara, *supra* note 2400, at 903 (explaining that “[i]n a Chapter 11 reorganization, the parties can agree to whatever new arrangement they wish.”).

253. See *id.* at 904–05 (describing bankruptcy's impact on health-related claims).

254. See *Black Lung Program*, U.S. DEP'T OF LABOR, <https://www.dol.gov/agencies/owcp/dcmwc> [<https://perma.cc/YJE9-ZCRP>] (last visited July 15, 2022).

255. Jonathan Randles, *Judge Rules Westmoreland Coal Can Cut Retiree Benefits, Union Contracts*, WALL ST. J. (Feb. 15, 2019), <https://www.wsj.com/articles/judge-rules-westmoreland-coal-can-cut-retiree-benefits-union-contracts-11550269932> [<https://perma.cc/M5FL-34E6>].

256. E.A. Crunden, *Coal Company's Bankruptcy Heightens Pressure on Green New Deal's 'just transition' Component*, THINKPROGRESS (Feb. 21, 2019), <https://archive.thinkprogress.org/coal-miners-benefits-green-new-deal-ocasio-cortez-just-transition-westmoreland-726bb083b340/> [<https://perma.cc/VQU5-SV52>].

named Patriot Coal.²⁵⁷ A few years after the spin-off, Patriot Coal filed for bankruptcy protection and began shedding its pension obligations,²⁵⁸ ultimately leading to the termination of retiree benefits.²⁵⁹

- Outside of the formal bankruptcy process, there are multiple avenues for AGs to advocate on behalf of environmental and worker concerns. While a bankruptcy proceeding is ongoing, the company is required to follow non-bankruptcy laws, including environmental and workers' rights laws, and the bankruptcy court will seek information from the AG or relevant regulator to confirm such compliance. Paying close attention to such issues could help ensure that these laws are followed. Meanwhile, an AG may have environmental or workers' rights claims against the company outside of the bankruptcy proceeding. The AG can argue that the automatic stay does not apply to those claims and continue to pursue the claims outside of the bankruptcy.
- Finally, enforcement efforts *before* a bankruptcy may also affect the bankruptcy itself. For example, a Kentucky law required coal mines to secure a bond to cover workers' wages, which would have helped the Blackjewel miners who lost their paychecks,²⁶⁰ but that law had not been enforced and the company lacked the requisite bond at the time of its bankruptcy.²⁶¹ Similarly, when the bankruptcy court ruled on Kentucky's motion to compel Blackjewel to bring its permits into compliance with environmental laws, the court sided with the company after finding that the state had for years neglected the company's environmental violations.²⁶²

In sum, strict enforcement of existing bankruptcy and other laws can help protect workers' and retirees' rights to payment, pensions, and health

257. Alec MacGillis, *The Incredible Disappearing Health Benefits*, THE NEW REPUBLIC (Feb. 19, 2013), <https://newrepublic.com/article/112449/peabody-energys-disappearing-health-benefits> [<https://perma.cc/ACN3-MGZB>].

258. *In re Patriot Coal Corp.*, 493 B.R. 65, 78 (Bankr. E.D. Mo. 2013); *see also* Maria Altman, *Bankruptcy Affects More Than Patriot Coal's Retired Miners*, NPR (Apr. 16, 2013), <https://www.npr.org/2013/04/16/177415724/bankruptcy-affects-more-than-patriot-coals-retired-miners> [<https://perma.cc/6KXK-KND3>].

259. Macey & Salovaara, *supra* note 2400, at 915–16.

260. KY. REV. STAT. ANN. § 337.200 (West 2010).

261. *See Findings and Recommendations Regarding Mining Companies' Compliance With KRS 337.200*, OFF. OF ATT'Y GEN., COMMW. OF KY. (Aug. 29, 2019), https://ag.ky.gov/pdf_news/20190829_KRS-337-200_FINAL-REPORT-WITH-EXHIBITS.pdf [<https://perma.cc/2THN-NN9B>].

262. Transcript from Motion Hearings at 2:09:00–2:17:30, *Blackjewel L.L.C. and Cumberland Coal LLC*, No. 2019-30289 (Bankr. S.D. W.Va. R. Sept. 11, 2020) (on file with author).

benefits in the context of a closure or reorganization.²⁶³ AGs can play a unique and important role to protect those rights.

3. Protecting Workers Across Sectors

Workers in both the emerging clean energy and the fossil fuel sectors are also experiencing many of the devastating impacts from climate change that workers throughout our economy face, including excessive heat at work, financial risk that threatens their pensions, and more. Below are some approaches that AGs can take or have taken to help protect a range of workers already adversely affected by rising temperatures and climate-induced disasters.

Under section 112 of the Clean Air Act, EPA is tasked with issuing safety rules for chemical plants that handle hazardous air pollutants.²⁶⁴ The Obama administration updated the safety rules after an explosion in a west Texas fertilizer plant, which demonstrated that first responders and neighboring communities needed better information about the chemicals that were being stored at the plants and that the plants needed better procedures to avoid future accidents.²⁶⁵ The Trump administration delayed and ultimately rolled those regulations back.²⁶⁶ AGs successfully challenged the delay²⁶⁷ but the challenge to the rollback remains pending as the Biden administration reconsiders the issue. Climate change is increasing the risks to chemical plants as they may be affected by increased risks of flooding and other weather disasters. AGs are engaged in pushing EPA to finalize a rescission of the Trump-era rollback and restore the urgently needed safety measures.²⁶⁸

263. See Elliot Negin, *Ask a Scientist: What Can We Do to Help Displaced Coal Workers?*, UNION OF CONCERNED SCIENTISTS (May 10, 2021), <https://blog.ucsusa.org/elliott-negin/what-can-we-do-to-help-displaced-coal-workers/> [<https://perma.cc/24NT-EU8F>].

264. 42 U.S.C. § 7412(r)(7)(B)(i).

265. See Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 82 Fed. Reg. 4594 (proposed Jan. 13, 2017) (to be codified at 40 C.F.R. pt. 68).

266. See Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date, 82 Fed. Reg. 27133 (proposed June 14, 2017) (to be codified at 40 C.F.R. pt. 68).

267. *Air All. Houston v. EPA*, 906 F.3d 1049 (D.C. Cir. 2018).

268. See Rulemaking Comments on EPA's Proposed Rule Safer Communities by Chemical Accident Prevention (Docket EPA-HQ-OEM-2022-0174) (Oct. 31, 2022), available at <https://stateimpactcenter.org/ag-work/ag-actions/twenty-ags-called-on-epa-to-protect-environmental-justice-communities-from-chemical-accidents> [<https://perma.cc/69P8-DLCY>]; Press Release, State Energy & Env't Impact Ctr., New York AG Office Provides Testimony on

Heat standards are rules requiring employers to take precautions to avoid worker harm when the heat becomes unsafe or dangerous.²⁶⁹ They generally include such common-sense measures as rest, shade, water, and gradual acclimatization to the heat. These protections are more and more necessary as the climate changes and heat waves intensify.²⁷⁰

Both the labor and environmental lawyers at AG offices have a role to play in pushing states and the federal government to adopt and implement strong heat standards to protect workers nationally. At the federal level, OSHA recently issued a request for information about the impact of climate change on occupational heat exposure; in January 2022, a multi-state coalition of states submitted comments in response.²⁷¹ The coalition urged OSHA to adopt a federal heat standard, which would create specific temperature thresholds at which different limits on work are imposed, in addition to expanding reporting requirements, increasing its workplace inspection program, and requiring employers to implement measures that prevent workers from overheating. AGs can continue to monitor the development of OSHA's proposed heat standard, including filing an amicus brief or intervening in support if the ultimate standard is challenged in court after being adopted.

AGs in states with state-level heat standards can educate the public about such laws and either enforce them directly or represent state agencies in their heat standard enforcement. In states without heat standards, AGs can advocate for enactment of such rules at the state level, or issue

EPA's Revisions to Risk Management Program Regulations (July 16, 2021), <https://stateimpactcenter.org/news-events/press-releases/ny-testimony-chemical-accident-safety-rule> [<https://perma.cc/YVD3-DGBF>].

269. See, e.g., MINN. R. 5205.0110 (2014); see also WASH. ADMIN. CODE § 296-62-09530 (2022); *Key Requirements: Oregon OSHA's permanent rules for heat illness prevention*, OR. OSHA: DEP'T OF CONSUMER & BUS. SERV. (rules for all workers), <https://osha.oregon.gov/OSHA-Pubs/factsheets/fs91.pdf> [<https://perma.cc/A2XU-WF4C>]; *Washington state emergency heat exposure rules increases protection for outdoor workers*, WA. STATE DEPT. OF LAB. & INDUS. (July 9, 2021) (rules covering outdoor workers), <https://content.govdelivery.com/accounts/WADLI/bulletins/2e781d8> [<https://perma.cc/7RMF-SAX4>].

270. See Juley Fulcher, *Heat Is One of the Chief Causes of Occupational Injuries and Fatalities*, Public Citizen Report (June 28, 2022), <https://www.citizen.org/article/boiling-point/> [<https://perma.cc/9JPN-7QB5>]; Ariel Wittenberg, *OSHA targets heat threats heightened by climate change*, E&E NEWS GREENWIRE (Oct. 26, 2021), <https://www.eenews.net/articles/osha-targets-heath-threats-heightened-by-climate-change/> [<https://perma.cc/4CDY-R26H>].

271. ATTORNEYS GEN. NY ET AL., Comments on Advance Notice of Proposed Rulemaking for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, Docket No. OSHA-2021-0009 (Jan. 25, 2022), <https://oag.ca.gov/system/files/attachments/press-docs/2022.01.26%20Multistate%20Comments%20on%20OSHA%20Heat%20Standards.pdf> [<https://perma.cc/7EFA-5HH8>].

reports that demonstrate the need for such a standard.²⁷² Finally, even without a heat standard, AGs with criminal jurisdiction might in the face of particularly compelling facts assess whether charges may be appropriate in cases of easily preventable and predictable heat-induced workplace fatalities.²⁷³

AGs can closely monitor cleanup operations after climate-related disasters such as hurricanes, reach out to worker organizations, and enforce relevant workers' rights laws to protect cleanup workers, who are a workforce particularly susceptible to violations. Workers performing cleanup after hurricanes, floods, or other climate-related disasters often experience serious exploitation and workplace violations.²⁷⁴ In addition to enforcing worker protection laws in the clean energy and fossil fuel sectors, AGs can also ensure compliance in relation to any new industries that arise to address the damages caused by climate-related disasters.

As the White House recently stated in a report focused on climate-related financial risk, "[c]limate change poses serious and systemic risks to the U.S. economy and financial system."²⁷⁵ There are several rules currently under consideration to address this. For example, the Employee Benefits Security Administration of the U.S. Department of Labor is currently accepting comments on steps it can take to "protect the life savings and pensions of U.S. workers and families from the threats of climate-related financial

272. See, e.g., FLANAGAN ET AL., *supra* note 214, at 1 (illustrating that so long as there is no final OSHA standard in effect, non-state-plan states would not be preempted from passing their own laws to protect workers from heat risk).

273. See, e.g., *Washington Contractor Sentenced in Fatal Workplace Trench Collapse*, INSURANCE J. (Mar. 8, 2022), <https://www.insurancejournal.com/news/west/2022/03/08/657208.htm> [<https://perma.cc/4FRC-ATU3>] (describing conviction obtained after employer failed to follow basic safety standards); see also Phil Hirschhorn, *Jury Acquits Shawn Purvis of Manslaughter in 2018 Workplace Death*, WMTW (Dec. 9, 2021), <https://www.wmtw.com/article/jury-deliberations-underway-in-workplace-manslaughter-trial-of-shawn-purvis/38473719> [<https://perma.cc/CF9K-PWQD>]; see, e.g., Nora Flaherty, *Saco Contractor Indicted on Rare Charge of Workplace Manslaughter*, ME. PUB. RADIO (Apr. 11, 2019), <https://www.mainepublic.org/maine/2019-04-11/saco-contractor-indicted-on-rare-charge-of-workplace-manslaughter> [<https://perma.cc/H2SY-BNNJ>] (describing indictment brought by the Maine Attorney General's office against a roofer who employed contractors after one fell to his death. Though the jury ultimately acquitted the employer, a prosecution in Maine may be a useful case to consider).

274. See Sarah Stillman, *The Migrant Workers Who Follow Climate Disasters*, THE NEW YORKER (Nov. 1, 2021), <https://www.newyorker.com/magazine/2021/11/08/the-migrant-workers-who-follow-climate-disasters> [<https://perma.cc/X4V9-U4D5>] (discussing the non-profit organization, Resilience Force, that works specifically with migrant workers).

275. THE WHITE HOUSE, EXEC. ORDER NO. 14,030, A ROADMAP TO BUILD A CLIMATE-RESILIENT ECONOMY: U.S. CLIMATE-RELATED FINANCIAL RISK 3 (2021).

risk.”²⁷⁶ AGs can advocate for strong action, for example, requiring administrators of retirement plans governed by the Employee Retirement Income Security Act to disclose the steps they have taken to mitigate climate-related risks and how well those mitigation efforts worked.

A number of news stories report instances of workers being discharged or threatened with discharge or discipline for evacuating or taking other action to remain safe during an impending hurricane.²⁷⁷ Similar concerns exist in relation to other climate-related disasters. For example, eight workers at a Kentucky candle factory and six workers in an Illinois Amazon warehouse were killed at work by a tornado; news reports indicated that the Kentucky workers were threatened with discharge if they left, and that the Amazon workers were told to remain at work.²⁷⁸ Currently, if workers do not have a union contract, there are typically no prohibitions on terminations for departing under such circumstances. At least one example of this kind of law exists, at the local level: in 2018, the Miami-Dade Board of County Commissioners passed an ordinance prohibiting employers from retaliating or threatening to retaliate against non-essential employees for complying with County evacuation orders during a state of emergency.²⁷⁹ AGs could advocate for the passage of such laws at the state level.

CONCLUSION

Addressing the climate crisis will require remodeling the economy so that sources of harmful greenhouse gases are no longer at its center. The current inflection point presents an enormous opportunity to construct a sector that provides good family-sustaining jobs with robust worker protections in place. It also offers the opportunity to examine and correct the dis-

276. Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk, 87 Fed. Reg. 8289 (Feb. 14, 2022).

277. See, e.g., Gillian B. White, *The Uncertainties of Being Asked to Work During a Hurricane*, THE ATLANTIC (Sept. 9, 2017), <https://www.theatlantic.com/business/archive/2017/09/hurricane-irma-work/539295/> [https://perma.cc/8N7P-LTFX]; see also Danielle Paquette, *Yes, You Can Be Fired for Missing Work While Fleeing Hurricane Irma*, WASH. POST (Sept. 8, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/09/08/yes-you-can-be-fired-for-missing-work-while-fleeing-hurricane-irma/> [https://perma.cc/K3QY-TUBG]; see, e.g., Mahita Gajanan, *Actually, You Can Be Fired for Not Showing Up to Work After a Hurricane*, MONEY (Sept. 8, 2017), <https://money.com/fired-evacuating-hurricane-irma/> [https://perma.cc/N8XB-BUX3].

278. Hamilton Nolan, *They were forced to stay at work as a tornado bore down. Would a union have saved them?*, THE GUARDIAN (Dec. 16, 2021), <https://www.theguardian.com/commentisfree/2021/dec/16/tornado-amazon-kentucky-candle-factory-workers-died> [https://perma.cc/M5MX-46GL].

279. MIA.-DADE COUNTY, FLA. CODE OF ORDINANCES § 8B-11.1 (2018).

proportionate and inequitable impact the energy sector has had and continues to have on low-income populations and communities of color. AGs are the top lawyers in their states and they have a wide range of tools, as well as significant flexibility for addressing a crisis that affects their constituents. The factors that generally lead to AG engagement—state-level harm, federal inaction, lack of effective alternative avenues for redress, interested state-level stakeholders, and the potential for multi-state action—are present in relation to the climate crisis and the needs of workers affected by that crisis. There are numerous opportunities for AGs to engage on these issues. This Article is designed to spark conversations about using those tools at AG offices, as lawyers in these offices consider avenues for action, and also in the advocacy community, as advocates seek ways to engage government officials in pursuing a just transition.