

POWER OF THE LAW QUARTERLY

Spring 2021

From the South to Washington: SELC Pressing Climate Change Solutions

Climate change and environmental justice have been a major focus in the early days of the Biden-Harris administration. At the same time, Southern utility companies are announcing renewable energy targets, and there's a growing public awareness nationwide that the impacts of climate change are already being felt. This is the most promising window we've ever had to tackle the greatest environmental challenge of our generation.

SELC has the expertise, the practical experience, and the network of relationships to seize this moment to push the South (and the nation) forward decisively.

After four years of playing defense to preserve our nation's most fundamental environmental protections, the door is open for real change. The Biden administration has placed a climate change czar in the White House and deployed John Kerry as the international face of the U.S. on the climate crisis. These are positive signs, but achieving lasting progress will not be easy. The new administration is looking for ideas to inform its whole-of-government approach, and SELC is in conversation with decision makers looking for answers.

As the nation turns its attention to climate change, we know that national solutions have to start in the South. Our fossil fuel-dependent region is a major contributor to the causes of climate change. Our communities have been among the first to feel the impacts of a warming climate, more powerful storms, and more frequent flooding. And Southern communities of color have borne a disproportionate share of the impact of these problems.

But while the federal government was AWOL on climate change during the previous administration, SELC was digging in to the problem and tenaciously

working to make historical progress in our states. We played a central role last year in helping Virginia adopt legislation committing to a carbon-free power system by 2050, dramatically expanding clean energy, and implementing programs to address the core environmental injustices of our fossil fuel economy. In North Carolina, we are pressing to adopt regulations that will implement Governor Cooper's executive order for similar carbon reductions from the energy sector (see page 4).

This year, we played a key role in securing the Virginia advanced clean car standards—the first such measures for cleaner, more efficient, climate-friendly vehicles in the South (see back cover). And in South Carolina we led efforts to secure passage of the Disaster Relief and Resilience Act, which requires sensible planning to minimize the risk of flood-related harm and damage, establishes a resilience office to ensure smart rebuilding after flood disasters, and creates a revolving fund that will allow communities to restore floodplains and help people in repeatedly flooded homes move to safer areas, with an emphasis on low- and moderate-income residents who cannot afford to leave without assistance.

As the Biden administration turns the nation's attention to the most urgent crisis of our time, SELC is bringing to the national stage our expertise in the law, our track record of developing practical solutions to tough environmental problems, and our success in building political coalitions to take decisive action. We are also making sure that solutions needed in the South are front and center.

We are determined to ensure that the early promise of the Biden presidency is realized on the critical issues of climate change and environmental justice, and we are committed to the significant challenge ahead of us.

REGIONAL HIGHLIGHTS

Standing with Memphis Community against Byhalia Pipeline



Memphis community members are furious about the proposed Byhalia Pipeline, a high-pressure oil pipeline that would cut through historic, already over-burdened Black neighborhoods in southwest Memphis and cross a well field that supplies drinking water to nearly one million Memphis residents. The pipeline developer admitted it targeted these neighborhoods because it viewed them as “the point of least resistance.”

The groundswell of community opposition to Byhalia has shed light

on the project and elevated it to one of the central environmental justice battles in the nation. At a rally organized in March by Memphis Community Against the Pipeline, former Vice President Al Gore called Byhalia a “reckless, racist ripoff,” and the area’s U.S. representative, Steve Cohen, spoke out against the project as well.

Crude oil pipelines often leak and sometimes fail catastrophically, disgorging dangerous pollution onto nearby communities. In the case of Byhalia, these communities include historic

Boxtown, named after formerly enslaved people used scrap material and wood from train boxcars to build homes there in the late 19th century. A 2013 study identified this area as an air pollution hotspot with a cumulative cancer risk four times higher than the national average.

SELC is partnering with communities in the path of the pipeline to ensure they receive equal protection under our environmental laws. On behalf of the communities, we have petitioned local governments to protect their neighborhoods and their underground drinking water aquifer. We have joined a lawsuit to oppose the pipeline company’s strong-armed attempts to take property—some of which has been in landowners’ families for generations—from them against their will. And in April, we filed a federal court challenge opposing the U.S. Army Corps of Engineers’ fast-track permit that would allow the project to cross and harm streams and wetlands without any meaningful environmental review or public input.

States Protecting Water Quality from Destructive Pipelines

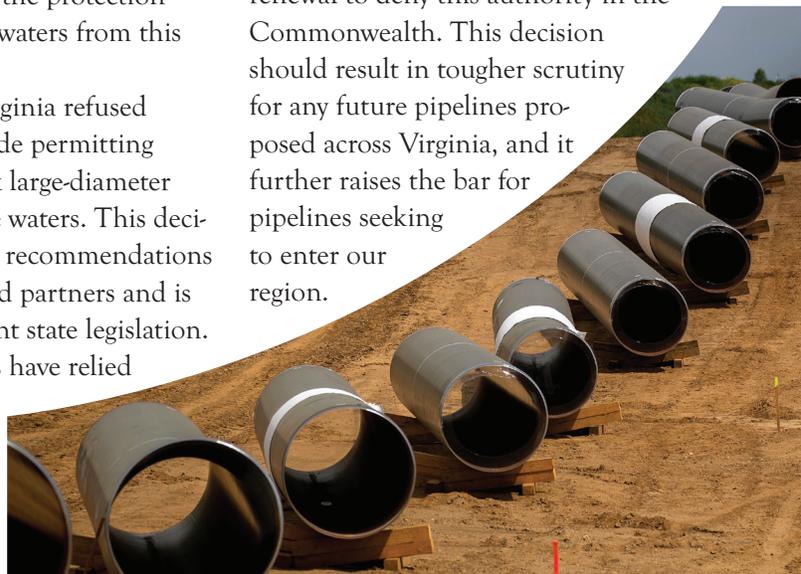
The outdated Mountain Valley Pipeline and its Southgate extension are seeking to cut across streams and wetlands to deliver more natural gas to Virginia and North Carolina despite state commitments to a clean energy future. SELC is leveraging expertise we developed in the successful campaign to cancel the Atlantic Coast Pipeline to help our allies limit the impact of MVP and future pipelines.

In 2020, North Carolina rejected a water-quality approval for the MVP Southgate extension into central North Carolina. When the developers challenged this decision, SELC joined the case on behalf of the Haw River Assembly to support the state. In March, the Fourth Circuit confirmed

North Carolina’s authority to withhold approval but asked the state to further explain its decision and favorably cited details in briefs filed by SELC and allies. We look forward to the state expanding on its rationale, and we will continue to support the protection of North Carolina’s waters from this harmful project.

Late last year, Virginia refused to certify a nationwide permitting program to fast-track large-diameter pipelines across state waters. This decision closely followed recommendations laid out by SELC and partners and is congruent with recent state legislation. For years, developers have relied on this program to provide blanket

authorization for all water quality impacts related to a project without public input and often with insufficient standards of environmental review. But nationwide permits must be renewed periodically, and Virginia took advantage of the latest renewal to deny this authority in the Commonwealth. This decision should result in tougher scrutiny for any future pipelines proposed across Virginia, and it further raises the bar for pipelines seeking to enter our region.



SELC Goes to the Mat over NEPA

In January, SELC filed a federal lawsuit challenging an eleventh-hour Trump administration rule unlawfully eviscerating the National Environmental Policy Act. NEPA is called the “Magna Carta” of environmental law with good reason: for nearly 50 years it has required federal agencies to evaluate the significant environmental impacts of major projects, to provide notice and an opportunity for people who would be affected by the project to weigh in, and to select the least damaging approach that would achieve the project’s purpose.

We were already in federal court to stop the Trump administration’s assault on NEPA standards that apply to all federal agencies. We are now stepping up once again to defend NEPA protections for our national forests and the invaluable natural resources they preserve. Faced with shrinking budgets and under orders to exploit our public lands for extractive industries like logging and mining, the U.S. Forest Service has created new loopholes and shortcuts that virtually eliminate the public’s ability to know how damaging Forest Service proposals will be and remove opportunities to hold the agency accountable.

For decades, NEPA safeguards have been a critical tool for SELC and our partners to protect our national forests—as well as their rugged mountains, pristine water, and trackless wilderness areas—from logging, road building, and other industrial projects. We will not stand by and let these natural riches be plundered.

While we hope the Biden administration will act quickly to restore these NEPA protections, our litigation is essential to defending our national forests now, while creating space for the thoughtful rebuilding of our legal standards.

A Victory for Endangered Species Protections

SELC won a major victory in our years’ long work to protect the last remaining wild red wolves. After the U.S. Fish and Wildlife Service reversed course on one of the most successful endangered species reintroduction programs in history, we sought a preliminary injunction in federal court. In a decision critical to the survival of the wolves, the court found the agency was violating its obligations under the Endangered Species Act.

Eastern North Carolina is home to the world’s only wild population of endangered red wolves. For decades, the red wolf was a recovery success story as Fish and Wildlife managed a program that saw the wild population grow from fewer than 10 to over 100 wolves. But in 2014, the agency ended the release of captive wolves and other measures essential to the species’s recovery, even allowing landowners to shoot unproblematic wolves. Predictably, the red wolf

population plummeted. Last November, with just seven wolves remaining in the wild and no pups born in the last two years, SELC urged the court to order the federal agency to fulfill its legal obligation to save the red wolf.

The court has now ordered the agency to resume the release of captive-born red wolves into the wild. This victory provides hope for the red wolves and communicates a strong message to the agency that it cannot ignore the Endangered Species Act.



Industrial Hog Pollution Is Not Clean Energy

As a new federal administration refocuses national priorities on addressing climate change, SELC is working in the South to discredit harmful strategies masquerading as clean energy solutions. In North Carolina, big energy and industrial agriculture are making risky plans to build a massive facility that will convert industrial hog waste into methane gas and ship it through pipelines to energy users.

Align, a joint venture of Dominion Energy and Smithfield (the largest industrial hog producer in the world), plans to build a biogas processing facility that would receive waste from 19 North Carolina industrial hog facilities. To manage animal waste, these facilities use an untreated lagoon and

sprayfield system that is an ongoing pollution nightmare for rural communities of color in the eastern part of the state. For years, SELC has been pushing a reluctant state legislature to address this environmental injustice by requiring Smithfield to use existing technology to clean up its operations.

In February, SELC filed a lawsuit challenging North Carolina’s air permit for the proposed biogas processing facility. Along with over two dozen organizations representing 200,000 North Carolinians, we also sent a letter to the state attorney general urging him to enforce an existing agreement with Smithfield requiring the hog giant to address the ongoing harms of its lagoon and sprayfield system.

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

After a Decade of Pollution, SELC Stops Benzene Leaks in North Birmingham

SELC is helping to address more than a decade of illegal benzene pollution at Drummond's ABC Coke plant in Tarrant, where residents in largely Black neighborhoods have long suffered from asthma, lung disease, and cancer. Drummond has long tried to evade any liability for leaking this known carcinogen into the

air. After EPA and local officials proposed a weak settlement, SELC intervened in the case and secured a commitment from Drummond to detect and repair benzene leaks for the life of the plant. We also ensured that related civil penalty funds will be redirected to benefit the affected communities in Tarrant and North Birmingham.



NORTH CAROLINA

SELC Urges the State to Cut Carbon Emissions

Capitalizing on the governor's call to achieve carbon neutrality by 2050, SELC is petitioning state regulators to establish a declining cap on power plant carbon emissions, develop a carbon trading program, and join the Regional Greenhouse Gas Initiative. By reinvesting carbon allowance auction

revenues in energy-saving programs, this approach offers a viable path to slashing fossil fuel pollution by 70 percent by 2030 and achieving carbon neutrality from the electricity sector by 2050, all while lowering customers' electric bills. Virginia has already taken these steps, and the

state recently netted more than \$43 million, which will fund energy-saving programs for families with limited means and address climate-fueled flood risks. We are now pushing North Carolina officials to take similarly decisive and cost-effective steps to address the climate crisis.

GEORGIA

Fighting an Unjust Concrete-Recycling Plant

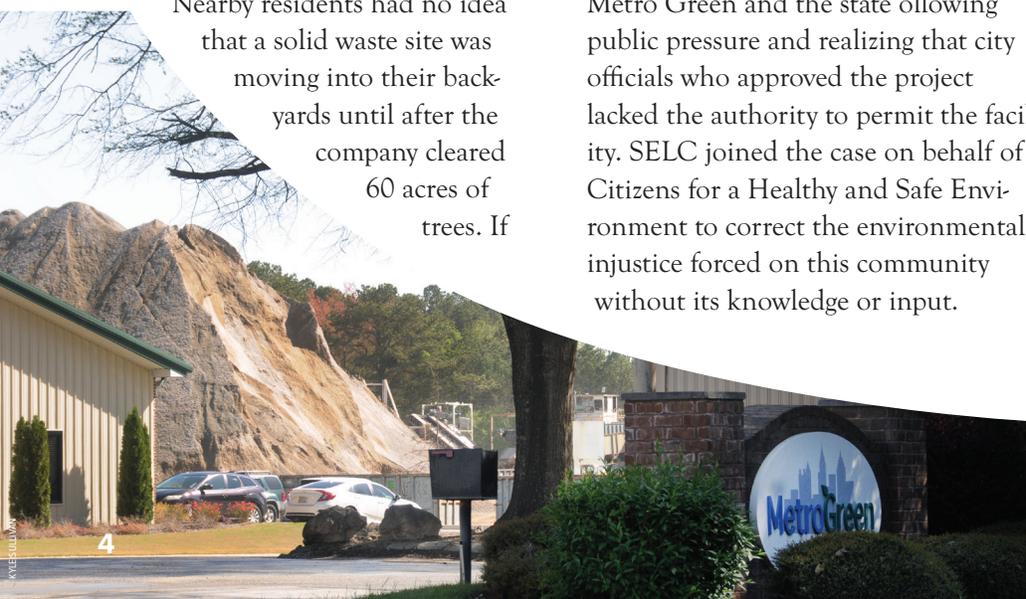
SELC and community members are working to stop Metro Green's massive construction-waste recycling facility that is under construction near predominantly Black neighborhoods in Stonecrest and DeKalb County.

Nearby residents had no idea that a solid waste site was moving into their backyards until after the company cleared 60 acres of trees. If

completed, the facility would accept around 400 tons per day of construction and demolition debris and expose residents to noise, dust, and heavy truck traffic across the street from their homes. Stonecrest filed suit against Metro Green and the state allowing public pressure and realizing that city officials who approved the project lacked the authority to permit the facility. SELC joined the case on behalf of Citizens for a Healthy and Safe Environment to correct the environmental injustice forced on this community without its knowledge or input.

State Shuts Down Tire-Burning Power Plants

In response to the advocacy of SELC and our partners, North Carolina ordered the shutdown of two power plants that burn old tires, creosote-soaked railroad ties, and coal. Residents near the Southport and Roxboro facilities, including a community where most families are people of color, suffered decades of increased risk of cancer and asthma, along with greasy soot coating their homes. When state regulators moved to renew the Clean Air Act permit for Roxboro, SELC cited the highlighted environmental justice concerns. In a significant victory for the communities' health, the state halted the permitting process, issued fines to both plants, and consulted with SELC on consent orders requiring the plants to close.



SOUTH CAROLINA

Holding Utilities Accountable for Clean Energy

SELC convinced South Carolina regulators to reject Dominion Energy's outdated, expensive energy plan that all but ignored smart, cost-saving options like energy efficiency and renewable energy. This outcome was

made possible by the 2019 Energy Freedom Act, legislation that SELC helped craft, which requires intensified scrutiny of South Carolina utilities by the Public Service Commission. This latest ruling sends a clear message that state regulators

will not rubber stamp wasteful, fossil fuel-heavy utility proposals and mandates that Dominion to incorporate nearly all of SELC's recommended improvements to the plan, including a stronger commitment to clean energy alternatives.

SELC Wins Major Settlement on Charleston Plastic Pollution

SELC secured a \$1.2 million settlement with Frontier Logistics after suing the company for widespread plastic pollution in the Charleston Harbor and local beaches. In summer 2019, beachgoers at Sullivan's Island began to notice something in the sand that didn't belong—masses of tiny plastic beads strewn across this popular Charleston-area beach. The pellets, called nurdles, are the building blocks of many commercial items made from plastic across the globe, and

Charleston has become a major hub for shipping these raw materials overseas. The nurdles from the spill were not only washing up on areas beaches, but also being eaten by fish, exposing them to toxic chemicals and posing a potential health risk to people who eat contaminated fish. When Frontier refused to admit responsibility for pellets that were traced to its facility and the South Carolina Ports Authority failed to hold them fully responsible, SELC stepped in

and filed suit to stop and clean up this plastic pollution—setting a precedent as this industry is poised for dramatic expansion in Charleston. The funds from the settlement will be used for projects to improve water quality in the Charleston Harbor watershed. And Frontier, now in a new facility in Charleston, has agreed to implement protective control measures and to allow independent expert review of its operations to prevent recurring plastic pollution.

TENNESSEE

Tennessee Rejects Destructive Highway

Tennessee announced plans in January to improve Highway 64 through the Ocoee River Gorge instead of blasting a new freeway through the mountains and streams of the nearby Cherokee National Forest. The project is known as "Corridor K," and over many years, SELC worked with local stakeholders and permitting agencies to show that an overbuilt road would be too destructive and that improvements to

the existing highway could meet the area's transportation needs just as well and more economically. The state took a fresh look and chose instead a set of SELC-supported improvements to address safety and reliability problems while protecting the natural treasures that attract tourist dollars to the area. North Carolina is taking a similar approach to its part of Corridor K, and SELC will help both states complete these smarter projects.



VIRGINIA

Mega-Landfill Brings Environmental Justice Threat to Historic School

Developers are proposing to build a mega-landfill on a 1,200-acre site in rural Cumberland County adjacent to the historic Pine Grove School—one of many Rosenwald Schools built to educate African-American children in the South during the Jim Crow era. Only

around 10 percent of these schools survive today, and an association led by former Pine Grove students is working to restore the school for use as a community center. Local officials narrowly approved the landfill, but it must still gain a number of state

and federal permits before the project can move forward. SELC is coordinating with community, environmental justice, and historical preservation groups to raise awareness about the project's risks and to ensure state and federal agencies give this proposal the careful scrutiny it requires.

INSIDE STORIES

Transportation Doesn't Have to Be the Leading Cause of Climate Change

Climate change is here. It is now. And it is hammering the Southeast. From more frequent and violent storms to extreme heatwaves and droughts, from “sunny day” flooding and rising sea levels to the potential extinction of one-third of the planet’s animals and plants, climate change is beginning to wreak a terrible toll. The largest source of climate-changing carbon pollution in the U.S.—and across most of the South—is transportation.

That’s why SELC is working hard to promote smart transportation decisions and to spur a clean transportation revolution to reshape the way we move people and goods.

Part of the answer lies in technology. The technology to dramatically reduce tailpipe emissions, improve fuel efficiency, and hasten the transition to electric vehicles already exists and is becoming more available and affordable. But technology is only part of the solution. Decades of bad policies, poor planning, and costly, destructive road projects have induced suburban sprawl, increased air and water pollution, and destroyed habitat. Communities of color and underserved communities are disproportionately

affected by the harms of bad the harms of bad transportation decisions.

SELC’s Land & Community team focuses on curbing carbon pollution and making transportation systems more efficient, affordable, and equitable by opposing unnecessary highway projects and promoting transit, passenger rail, and walkable communities. To further reduce vehicle pollution, we are accelerating the adoption and accessibility of electric vehicles and other clean technologies. And we direct roads and development away from wetlands, marshes, and forests, which are natural carbon sinks and also store and mitigate floodwaters and rising sea levels.

Protecting our communities and our environment

The South has been the fastest growing region of the country for decades. As its population has boomed, so have sprawling development, the number of miles we drive, and the time we spend sitting in traffic. Unfortunately, the knee-jerk response to congested roads has long been to pave over the problem with more asphalt. This does not work. Experience shows that this approach provides, at best, temporary relief followed by additional development, sprawl, traffic, and pollution. Lather, rinse, repeat.

Often, there are better options.

SELC has used a variety of legal and advocacy tools to stop dozens of unnecessary, expensive highway projects, like the 211-mile-long Atlanta Outer Perimeter, Nashville’s Northern Beltline, the Garden Parkway near Charlotte, and a \$12 billion plan to double the 325-mile stretch of I-81 that runs through Virginia. And SELC doesn’t just say no to roads. We also work with technical experts, communities, and leaders to develop alternatives that promise real, lasting solutions at a fraction of the price and with less harm to people and the environment.

When pressure mounted to construct a new Route 29 bypass near Charlottesville, Virginia, SELC successfully championed a suite of lower-cost improvements to the existing corridor that better addressed traffic problems while causing far less environmental damage. In 2019, we pushed back against a proposed outer loop around Raleigh, eventually reaching a landmark settlement with the North Carolina Department of Transportation that commits the state to evaluate climate change impacts for all major projects. This critical reform promises to transform transportation decision-making by requiring officials to weigh the climate consequences of proposed highway projects.

Too often, the communities that suffer the most from the impacts of careless infrastructure projects are those with limited means and communities of color, and SELC prioritizes supporting these communities at risk. In coastal South Carolina, we are partnering with the Phillips Community to oppose a major





expansion of Highway 41 that would bisect the community. Founded by freed people after the Civil War, Phillips already experiences increased flooding from the same sprawling developments that the highway project would service. In eastern North Carolina, we are working with farmers, small-business owners, hunters, and fishermen who for decades have opposed a \$600 million toll bridge that threatens the Currituck Sound and Northern Outer Banks—a bridge that would be underwater due to sea level rise before it pays for itself.

We are pushing back on poorly planned development proposals as well. Our attorneys are busy fighting large-scale projects near Charleston that would increase sprawl and decimate wetlands that help reduce flooding, including a 9,000-acre residential development that would fill 188 acres of wetlands next to Francis Marion National Forest. Once again, SELC is offering creative and less destructive alternatives, including a proposal that would yield the same amount of housing, preserve vast acres of wetlands, and reduce flood risks.

Accelerating clean transportation and smarter growth

At the same time, we are advancing clean transportation solutions: from cleaner vehicles, to improved transit options that reduce the number of car trips required to get to people to work and school, to reinvigorated rail systems that can move freight and people off congested roadways and onto cleaner trains.

With the pace of advances accelerating and costs declining, automakers can



deliver cars and trucks that drastically reduce their carbon emissions. We are using our policy and legal expertise to promote improvements to infrastructure, incentives, and electricity planning that would expand the use of zero-carbon electric vehicles in a cost-effective way. When Volkswagen was caught cheating on its vehicle emissions claims, states in our region received significant settlements.

SELC worked with Virginia officials to direct the vast majority of the state's \$93 million settlement to electrify transportation—including school buses and transit buses—and expanding charging infrastructure. As a result, 95 percent of Virginians are expected to live within 30 miles of a fast-charging station by the end of next year.

We are advancing clean transportation solutions.

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Then, in February, we helped to secure the landmark advanced clean car standards in Virginia, making it the first Southern state to adopt such effective measures to curb carbon pollution from tailpipes and expand access to electric vehicles. This law is the single largest step Virginia has taken to date to combat climate change.

SELC is also seeing breakthroughs in our efforts to increase rail traffic. In March, Virginia Governor Ralph Northam announced a transformative \$3.7 billion rail plan that doubles the capacity of Long Bridge—a choke point for passenger and freight rail crossing the Potomac River—River—and increases passenger rail service between Washington, D.C, Richmond, and Hampton Roads. SELC spent years building support for this solution, which will add rail capacity in the congested I-95 corridor and quicken rail travel in Virginia by giving right-of-way to passenger trains. The Long Bridge project alone is projected to divert five million cars and one million trucks to rail annually.

We are proud of these accomplishments, each year in the making, that are tackling head-on some of the major causes and consequences of the climate crisis in our region. But we are just getting started. We are expanding our work across the region to solve seemingly intractable environmental problems and to leverage common-sense solutions at the national level.

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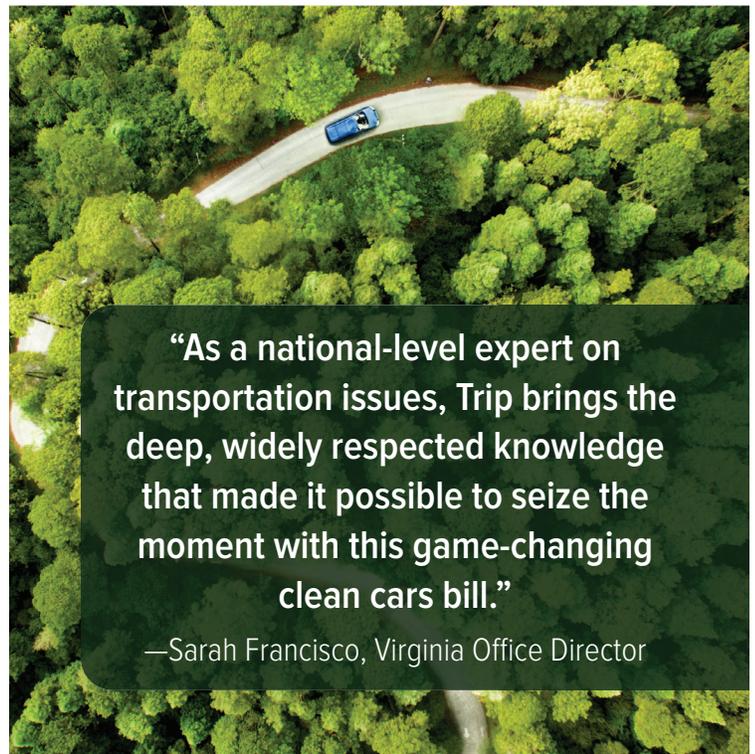
Virginia Becomes First in South to Adopt Clean Car Standards

In March, Virginia became the first Southern state to adopt advanced clean car standards by enacting legislation that will substantially cut tailpipe pollution and expand the availability of electric vehicles. The transportation sector has become the biggest source of carbon emissions nationally and in Virginia, where motor vehicles account for nearly half of all carbon pollution. Reducing auto pollution is thus essential to addressing climate change. The new law requires that auto manufacturers increase the average fuel efficiency of cars sold in Virginia and deliver an increasing percentage of zero-emission electric vehicles to the state.

The new clean car standards will produce the greatest reduction of greenhouse gas pollution in state history by eliminating 48 million tons of carbon emissions through 2040. The new measures will also reduce other tailpipe pollutants, like carbon monoxide, volatile organic compounds, and smog-forming nitrogen oxide, which disproportionately harm communities of limited means and communities of color.

SELC's advocacy was critical in enacting this policy. We played a leading role in drafting key provisions, negotiating with the auto industry to gain their support

and coordinating with lawmakers and partners to ensure success. In all of these efforts, we are extremely fortunate to have senior attorney Trip Pollard, a recognized authority in clean transportation, leading the way, and we hope this victory resonates across our region and the country.



“As a national-level expert on transportation issues, Trip brings the deep, widely respected knowledge that made it possible to seize the moment with this game-changing clean cars bill.”

—Sarah Francisco, Virginia Office Director