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Weaponized Uncertainty: Addressing Antitrust Law's Climate Cooperation Problem

ABSTRACT. As federal and international approaches to climate change falter, private sustainability agreements have emerged as a promising alternative for large-scale environmental coordination. However, the absence of a formal legal framework governing such agreements creates a dangerous ambiguity: discouraging climate cooperation through the chilling effect of antitrust enforcement while enabling anticompetitive actors to exploit environmental rhetoric as legal cover. This article examines the tension between Environmental Sustainability Goals and American antitrust law, arguing that the current legal landscape fails both purported goals. This article demonstrates that the absence of clear statutory guidance has allowed investigatory power to function as de facto enforcement, dismantling voluntary climate coalitions without adverse merit rulings. This article recommends creating a narrowly tailored federal safe-harbor statute modeled on the National Cooperative Research and Production Act and informed by the European Union's 2023 Revised Horizontal Cooperation Guideline. Sustainability agreements would receive conditional antitrust protection in exchange for disclosure to the Department of Justice and the Federal Trade Commission, public transparency, nondiscriminatory participation, and periodic agency review.

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INTRODUCTION

In 2015, the City of Seattle enacted an ordinance—the first of its kind in the United States (U.S.)—granting collective bargaining rights to Uber and Lyft drivers classified as independent contractors.¹ However, before drivers could negotiate their first contract, Uber partnered with the U.S. Chamber of Commerce (COC) to challenge the ordinance as a violation of federal antitrust law.² Uber argued that independent contractors who jointly negotiate wages are engaged in illegal price-fixing under Section 1 of the Sherman Act.³ In November 2017, the Trump administration's Department of Justice (DOJ) and Federal Trade Commission (FTC) filed a joint amicus brief in *Chamber of Commerce v. City of Seattle (2015)* before the Ninth Circuit, siding with Uber and the COC against drivers.⁴ Several economists publicly condemned the intervention, observing that agencies deployed antitrust law not to protect competition, but to shield Uber from engaging in collective bargaining with its employees.⁵ The investigation did not produce an adverse ruling on the merits, but the coalition dissolved anyway under the weight of legal uncertainty.⁶

The *Chamber of Commerce* case serves as a template for how antitrust investigatory authority can be politically weaponized to dismantle voluntary collective action agreements. This same enforcement architecture, which dismantled labor unionization in Seattle, has been similarly deployed against private environmental cooperation. In 2019, the DOJ's Antitrust Division opened a formal investigation into a voluntary agreement between California's Air Resources Board and four major automakers.⁷ The investigation was closed in February 2020 without charges,⁸ but the coalition had already fractured. Other major automakers, previously aligned with California in support of higher federal fuel economy standards, joined the Trump administration's

¹ Seattle, Wash., Ordinance 124968 (Dec. 14, 2015).

² *Chamber of Commerce of the United States v. City of Seattle*, 274 F. Supp. 3d 1155 (W.D. Wash. 2017).

³ Sherman Antitrust Act, 15 U.S.C. § 1 (2024).

⁴ Brief for the Fed. Trade Comm. and the Dep't of Just. as Amici Curiae Supporting Respondents, *Chamber of Com. v. City of Seattle*, 894 F.3d 1001 (9th Cir. 2017) (No. 17-35640).

⁵ Marshall Steinbaum, *Antitrust Implications of Labor Platforms*, CPI Antitrust Chronicle, May 2018, at 5-6.

⁶ Paul Balmer, *Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change*, 47 Ecology L. Currents 219, 226 (2020).

⁷ Nicole A. Veno et al., *Climate and Antitrust*, 16 Geo. Env't L. Rev. 1, 14 (2025).

⁸ *Id.*

litigation against California's independent authority to set emissions rules.⁹ Scholarly critics observed that the investigation had successfully chilled climate cooperation without requiring an adverse ruling on the merits.¹⁰

In 2024, Representative Jim Jordan (R-OH) and Chairman Thomas Massie (R-KY) called for investigations into over 130 companies associated with the ESG investment group Climate Action 100+ (CA100).¹¹ The organization was accused of “prioritizing woke investment over their fiduciary duties,”¹² which is part of a larger and growing issue of “climate cartels.”¹³ Following the investigation, over 70 members left CA100, although no actual enforcement action was taken.¹⁴ This instance presents another example of the damage even just demands for investigations can have in damaging confidence in sustainability agreements.

This pattern reveals a structural vulnerability in antitrust law. In the absence of a formal legal framework governing private sustainability agreements, investigatory power functions as de facto enforcement. Voluntary climate coalitions can be dismantled by initiating an investigation, filing an amicus brief, or threatening per se liability. These avenues do not require a court to rule that the agreement was anticompetitive. Federal and international regulatory approaches have faltered in parallel as they fail to properly enforce large-scale legislation.¹⁵ The Trump administration withdrew from the Paris Agreement and was uncooperative with the United Nations Framework Convention on Climate Change (UNFCCC) and the Intergovernmental Panel on Climate Change (IPCC).¹⁶ Meanwhile, domestic enforcement of environmental standards is obstructed by resource constraints, and

⁹ Balmer, *supra* note 6, at 26.

¹⁰ *Id.*

¹¹ Press Release, House Judiciary Committee Republicans, *Jordan and Massie Demand Information From Over 130 Companies Surrounding Their Involvement with Woke ESG Cartel Climate Action 100+* (July 30, 2024).

¹² *Id.*

¹³ *Id.*

¹⁴ Lamar Johnson, *More than 70 Investors Have Left Climate Action 100+ Since GOP Probe: House Judiciary*, ESG Dive (Dec. 17, 2024), <https://www.esgdive.com/news/house-judiciary-esg-probe-more-than-70-investors-have-left-climate-action-100/735805/>.

¹⁵ Veno et al., *supra* note 7, at 1-5.

¹⁶ United Nations Framework Convention on Climate Change, *United States Withdrawal from the Paris Agreement*, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-united-states-withdrawal-from-the-paris-agreement> (last visited Feb. 10, 2026).

regulatory standards are restricted by inconsistency between states.¹⁷ Private sustainability agreements have emerged as a promising alternative mechanism for large-scale environmental coordination. However, the absence of a statutory framework governing such agreements creates a dangerous ambiguity. It simultaneously discourages genuine climate cooperation through the chilling effect of antitrust enforcement and enables anticompetitive actors to exploit environmental rhetoric as legal cover.

The U.S. stands apart in its failure to resolve this ambiguity as the European Union (EU) responded to the tension between competition law and collective climate action with legislation. In 2023, the European Commission issued the Revised Horizontal Cooperation Guidelines, dedicating an entire chapter to sustainability agreements and establishing a structured framework under which competitors may coordinate on environmental objectives without triggering per se antitrust liability.¹⁸ Participating parties must satisfy conditions of transparency, nondiscrimination, and proportionality.¹⁹ Member states have since approved concrete sustainability agreements across industries, from shared plastic reuse systems in Germany to unified environmental reporting among Dutch banks.²⁰ The EU's approach does not immunize sustainability coordination from competition scrutiny; it channels that scrutiny through clear, advance-facing rules rather than ad hoc enforcement. Where the EU framework gives firms legal certainty before they act, the U.S. framework allows uncertainty to be wielded as a selectively political instrument. The absence of a statutory framework in the U.S. is not merely a regulatory gap, but an active impediment to private climate governance.

This article examines ambiguity within the U.S. framework and argues that the current legal landscape fails both goals it purports to serve. Part I explains the theoretical and doctrinal background: Elinor Ostrom's framework for managing common-pool resources, the competing schools of antitrust thought that bear on sustainability cooperation, and the statutory and judicial precedents that define the

¹⁷ Erik Frohm et al., *Environmental Policy Stringency and CO₂ Emissions*, OECD (Nov. 7, 2023), [https://one.oecd.org/document/ECO/WKP\(2023\)26/en/pdf](https://one.oecd.org/document/ECO/WKP(2023)26/en/pdf).

¹⁸ European Commission, *Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Cooperation Agreements*, at ch. 9, COM (2023) 3445 final (Jan. 6, 2023).

¹⁹ *Id.*

²⁰ Emma Kranendonk & Nick Strous, *Sustainability Agreements Between (Potential) Competitors*, Taylor Wessing (Sept. 30, 2024), <https://www.taylorwessing.com/en/insights-and-events/insights/2024/10/sustainability-agreements>.

space for coordinated private action. Part II uses *Texas v. BlackRock, Inc.* (2025) as a central case study situated within the broader pattern of enforcement actions—including the automaker and Clean Truck Partnership investigations—that demonstrate how antitrust uncertainty has functioned as a de facto prohibition on voluntary climate cooperation. Part III analyzes potential solutions, including Chicago-school quantification approaches, Neo-Brandeisian structural reforms, and the European Union’s 2023 Revised Horizontal Cooperation Guidelines. This article recommends a narrowly tailored federal safe-harbor statute—a Climate Sustainability Agreement Act—modeled on the National Cooperative Research and Production Act (NCRPA). Under this framework, sustainability agreements would receive conditional antitrust protection in exchange for disclosure to the DOJ and FTC, public transparency, nondiscriminatory participation, and periodic agency review. The goal is not blanket immunity but a durable statutory safe-harbor that replaces the current regime of weaponized uncertainty with clear, enforceable rules.

I. CONTEXT & BACKGROUND

A. *Mechanics of Antitrust Law*

Properly assessing the applicability of antitrust law in sustainability agreements requires understanding how antitrust law should work and where the system is vulnerable to misuse. The core prohibition in the Sherman Act is written in sweeping terms: “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”²¹ As any coordinated commercial activity could qualify as a “restraint of trade,” courts developed two analytical frameworks for determining when coordination crosses into unlawful anticompetitive conduct.

The first analytical framework is the per se rule, when certain categories of conduct—horizontal price fixing, output restrictions, and market allocation among competitors—are treated as illegal without inquiry.²² Courts determined that these forms of coordination are so harmful to competition that the cost of case-by-case analysis is not justified.²³ The second framework is the rule of reason, applied to

²¹ Sherman Antitrust Act, 15 U.S.C. §§ 1–7 (2024).

²² *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223–24 (1940).

²³ *See Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 8 (1979) (distinguishing per se rules from rule-of-reason analysis).

conduct with ambiguous competitive effects.²⁴ Under the rule-of-reason analysis, courts assess whether the anticompetitive harms of a challenged restraint outweigh its procompetitive benefits. This inquiry is searching and contextual, and where the doctrinal debate over sustainability agreements is felt. The distinction between these two frameworks matters enormously for how authority can be weaponized. If an enforcement agency credibly argues that a voluntary agreement among competitors resembles a horizontal price-fixing or output-restriction arrangement, the threat of *per se* liability is sufficient to produce a chilling effect on sustainability agreements. As has been shown in the Clean Truck Partnership or CA100, enforcement agencies need not prevail in court to achieve their preferred outcome. Absent a statutory safe harbor qualifying sustainability agreements as subject to rule-of-reason review rather than *per se* liability, this gap in the doctrine functions as a political tool.

To illustrate proper antitrust enforcement, consider *United States v. American Tel. & Tel. Co.* (1982).²⁵ AT&T operated as a federally sanctioned telecommunications monopoly for decades, justified by the massive infrastructure requirements of building a national phone network.²⁶ By the late 1970s, the government determined that AT&T's dominance over both the local exchange network and long-distance markets was actively preventing competitive entry and suppressing technological innovation.²⁷ The resulting breakup was not a politically motivated disruption of a voluntary coordination arrangement. It was a targeted structural remedy, developed over years of litigation on the merits, calibrated to restore the conditions for competition. The contrast with the automaker investigation is instructive. In *United States v. American Tel. & Tel. Co.*, enforcement followed evidence of actual harm to competition, adjudicated through an adversarial process. In the automaker investigation, enforcement was initiated within weeks of a voluntary environmental agreement, abandoned without charge, and produced market fragmentation without a single finding on the merits. The issue is not antitrust law itself, but that in the absence of a formal framework governing sustainability, the threat of *per se* liability can be used against collective climate action before any court has the opportunity to assess whether that action is actually anticompetitive.

²⁴ Board of Trade of Chicago v. United States, 246 U.S. 231, 238 (1918).

²⁵ United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), *rev'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

²⁶ *Id.* at 135–36.

²⁷ *Id.* at 140–45.

B. Managing the Commons

The substantive case for permitting sustainability agreements begins with the theory of collective resource management. Nobel Prize-winning economist Elinor Ostrom identifies three principal mechanisms for managing common-pool resources: government regulation, private ownership, and communal governance.²⁸ On one hand, government regulation establishes enforceable standards but suffers from limited responsiveness and structural separation between regulators and those managing the relevant resources.²⁹ On the other hand, private ownership aligns incentives with conservation but is difficult to apply to nonexcludable goods.³⁰ Ostrom's preferred mechanism, communal governance, involves relevant parties designing the rules, monitoring systems, and enforcement institutions for their shared resource.³¹ This model is intended to produce more durable outcomes because the parties have a direct stake in the resource's continued viability. Sustainability agreements are the private-governance application of Ostrom's communal model. Rather than waiting for government standards to trickle down or for property rights to be assigned to diffuse atmospheric resources, sustainability agreements enable firms directly engaged with a given environmental problem to coordinate their own standards and accountability mechanisms. Therefore, the theoretical case for such agreements is not primarily moral, but structural.

Environmental disclosure presents an obstacle to realizing this promise of well-intentioned and directed climate coordination. Emissions reporting in the U.S. is voluntary, in contrast to the EU's mandatory Non-Financial Reporting Initiative. Disclosure fails to produce meaningful environmental outcomes as various reporting methods produce inconsistent, non-comparable results disconnected from business decisions.³² As investors demand climate disclosure, standardized, enforceable rules are required to quantify climate risk. During the 2016 Paris Accords, the UN drew up a plan for increased climate collaboration in Article 6, which details how linkages between national carbon markets, crediting mechanisms, multilateral transfers, and

²⁸ Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* 8-18 (Cambridge Univ. Press 1990).

²⁹ *Id.*

³⁰ Goods such as air or water which are unable to be divided between multiple owners.

³¹ Ostrom, *supra* note 28, at 8-18.

³² Melissa K. Scanlan, *Climate Risk is Investment Risk*, 35 *Nat. Resources & Env't* 18, 20 (2020).

cooperation between public or private entities help fight climate change.³³ This framework also incurs enforceability issues due to its voluntary nature and lack of a centralized authority. Although reforms incentivize collaborative decarbonization efforts, without accountability, they are rendered useless in creating real change. Any workable sustainability framework must address not only antitrust liability but also the institutional infrastructure for credible disclosure.

C. Competing Schools of Antitrust Thought

The lack of a formal sustainability agreement framework in the U.S. reflects ideological disagreement about the proper scope of antitrust law. Two schools of thought dominate contemporary doctrine and are directly relevant to this debate.

The Chicago School, associated with thinkers such as Milton Friedman and Robert Bork, treats antitrust law as a narrow instrument for maintaining low consumer prices.³⁴ This is quantified through the Consumer Welfare Standard (CWS), which aggregates the effects on price, output, and quality caused by anticompetitive conduct.³⁵ Under this framework, antitrust enforcement is strictly limited to conduct that demonstrably harms consumers. Social goals—such as environmental protection—fall categorically outside the scope of legitimate antitrust application. Chicago School scholars oppose sustainability agreements because they introduce social or political considerations that antitrust doctrine does not account for.³⁶ The primary obstacle here, however, is the monetization of climate externalities. Climate change has real economic costs, but translating diffuse, long-run atmospheric damage into the consumer welfare metric has proven difficult. Although this analysis does not require a specific dollar cost, the long-term and dispersed nature of climate externalities adds a layer of difficulty to this traditionally narrow analytical perspective. Quantification is not impossible, but the Chicago School framework is limited in its scope as it analyzes only the immediate competitive costs of sustainability coordination while ignoring long-run economic benefits.

³³ Michael A. Mehling, *Governing Cooperative Approaches under the Paris Agreement*, 46 *Ecology L. Q.* 765, 767 (2019).

³⁴ Justin Lindeboom, *Two Challenges for Neo-Brandeisian Antitrust*, 68 *Antitrust Bull.* 392, 395 (2023).

³⁵ Albert H. Choi & Daniel A. Crane, *Environmentalism and Antitrust*, 42 *Yale J. on Reg.* 944, 946 (2025).

³⁶ Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* 18 (Columbia Global Reports 2018).

The Neo-Brandeisian school, drawing on Justice Louis Brandeis's warnings about the dangers of concentrated economic power, takes a broader view.³⁷ Where the Chicago School analysis focuses on consumer prices, Neo-Brandeisian thought considers the distributional effects of market power on workers, small businesses, and democratic governance.³⁸ This school is broadly skeptical of private coordination arrangements, fearing they grant private actors quasi-legislative authority over market behavior without democratic accountability.³⁹ The concern is not only that sustainability agreements might produce anticompetitive effects, but that private entities exercising governance power over broad industries are structurally problematic.⁴⁰ If private coordination is presumptively suspect, and government regulation has demonstrably faltered, the result is a policy vacuum that the climate crisis cannot afford.

D. Antitrust Law as a Coordination-Rights Allocator

A statutory safe-harbor framework is an appropriate solution to this divisive issue, not as a compromise at the median between competing ideologies, but as the mechanism that makes both frameworks internally consistent with stated goals. Consider a hypothetical sustainability agreement between five large domestic steel producers. The firms agree to jointly adopt standardized carbon emissions accounting methodologies and reduction goals over the next ten years. This information is disclosed to a federal agency, and the firms accept nondiscriminatory entry by other competitors on the same terms. There are no agreements on price, output levels, or market allocations. Under the current doctrine, this agreement would face per se exposure as a horizontal arrangement between competitors. A court review would determine if the agreement was a price-fixing or output-restrictions scheme before reaching the rule-of-reason analysis.⁴¹ The uncertainty created by court review deters participation in such agreements, as over sixty percent of companies report avoiding climate collaboration due to antitrust concerns.⁴²

³⁷ Lindeboom, *supra* note 34, at 395.

³⁸ *Id.* at 397.

³⁹ *Id.* at 400.

⁴⁰ *Id.* at 404.

⁴¹ *Ohio v. American Express Co.*, 585 U.S. 529, 541 (2018).

⁴² Matteo Gasparini et al., *When Climate Collaboration Is Treated as an Antitrust Violation*, Harv. Bus. Rev. (Oct. 17, 2022), cited in Trip Johnson, *Climate Action's Antitrust Paradox*, 55 *Env'tl. L. Rep.* 1, 7 (2025).

WEAPONIZED UNCERTAINTY: ADDRESSING ANTITRUST LAW'S CLIMATE COOPERATION PROBLEM

Under a properly designed safe-harbor framework, this agreement would receive conditional protection from per se liability in exchange for disclosure, transparency, nondiscriminatory participation, and a prohibition on coordination directly altering prices or output. The rule of reason would still apply, the agency would retain review authority, and anticompetitive conduct would still be prosecuted. The framework would eliminate enforcement agencies from weaponizing per se uncertainty against agreements that met the prerequisite for legitimate coordination. From the Chicago School of thought, the framework does not allow sustainability agreements to evade the CWS; it channels analysis through a structured process rather than through ad hoc enforcement. From the Neo-Brandeisian perspective, the framework addresses the democratic accountability concern through disclosure to the DOJ and FTC, periodic agency review, and nondiscriminatory participation requirements. Neither school of thought is the regime substituting investigatory power for adjudication, causing voluntary coalitions to dissolve before courts assess them on merits, resulting in a legal vacuum that serves neither competition nor the climate.

Congress has already demonstrated that it understands this logic behind a safe-harbor framework. The NCRPA and the Standards Development Organization Advancement Act (SDOAA) create conditional safe harbors for private coordination when market fragmentation produces worse outcomes than structured cooperation.⁴³ While they create safe harbors on the grounds of research consortia and standard-setting bodies, climate change presents the same structural justification. Statutory authorization was not allowed on the social value of technological innovation; it was justified by identifying a structural market failure that competition alone could not resolve. The question is not whether private coordination serves a morally worthy end, but whether this market failure warrants a conditional coordination framework.

Climate change is a textbook example of this phenomenon. Greenhouse gas emissions impose costs on public health, infrastructure, and long-run economic productivity that markets systematically fail to price. This is because no individual firm bears the full social or economic cost of all greenhouse gas emissions. The result is a prisoners' dilemma:⁴⁴ each firm acts rationally in its own competitive interest and

⁴³ National Cooperative Research Act of 1984, Pub. L. No. 98-462, 98 Stat. 1815 (1984); Standards Development Organization Advancement Act of 2004, Pub. L. No. 108-237, 118 Stat. 661 (2004) (codified at 15 U.S.C. §§ 4301–4306).

⁴⁴ The prisoner's dilemma is a game theory concept which involves two rational individuals who, acting in their own self-interest, choose not to cooperate, resulting in a worse outcome for both than if they had worked together.

overproduces emissions. This is structurally identical to the collective action failures in research and development markets that Congress addressed through the NCRPA, and in standard-setting markets that it addressed through the SDOAA. Framing sustainability agreements as a market-failure response rather than a moral scapegoat is not merely strategic; it is the methodology consistent with existing antitrust precedent and resistant to political weaponization.

II. CASE STUDIES: THE COST OF LEGAL AMBIGUITY

The three enforcement actions examined in this section illustrate two distinct failures produced by the absence of a statutory safe-harbor framework for sustainability agreements. The cases of *The California Automaker Investigation* and *The Clean Truck Partnership* together reveal the first failure of underprotection: enforcement agencies deploying investigatory power against legitimate voluntary climate coordination before a court can assess the merits. This is where antitrust law is perverted as a political tool used to dissolve coalitions without an adverse ruling. The case of *Texas v. BlackRock* highlights the second failure of overprotection: defendants invoking sustainability rhetoric to shield conduct that goes well beyond legitimate coordination. This is where large corporations nefariously mask anticompetitive actions such as shareholder pressure campaigns, coordinating public commitments, and suppressive industry-wide output. As will be shown in this section, both failures produce similar effects on consumer prices and market competition while sharing a common cause. Altogether, these cases show that—without a clear statutory framework—enforcement agencies fill the vacuum, courts judge novel conduct without an applicable doctrine, and private actors cannot distinguish legitimate climate stewardship from anticompetitive conduct.

A. *The California Automaker Investigation (2019-2020)*

The central legal question presented by the California automaker investigation was whether a voluntary emissions agreement between four competing automakers and the California Air Resources Board constituted an unlawful horizontal conspiracy in restraint of trade under Section 1 of the Sherman Act. In July 2019, Ford, Honda, Volkswagen of America, and BMW announced that they would continue to meet California's stricter fuel economy standards, notwithstanding the Trump administration's proposed federal rollback, in exchange for modest regulatory predictability from the state. The agreement was not a production-restriction scheme

among competing manufacturers; it was a private regulatory arrangement substituting for a federal standard the administration elected not to enforce.

The governing legal framework is well established. Section 1 of the Sherman Act prohibits every contract, combination, or conspiracy in restraint of trade among the several states.⁴⁵ Horizontal agreements among competing producers are the most scrutinized arrangements under this provision, and where such agreements have the effect of restricting output or fixing prices, they are subject to per se condemnation without inquiry into procompetitive justifications.⁴⁶ Where competitive effects are ambiguous, the rule of reason analysis applies. Critically, as established by the National Society of Professional Engineers (NSPE) and in the case *FTC v. Superior Court Trial Lawyers* (1990), the social or moral value of an agreement's objectives provides no insulation from scrutiny.⁴⁷ The DOJ invoked this principle in defending its decision to investigate.⁴⁸

Within weeks of the agreement being struck, the DOJ's Antitrust Division opened a formal investigation on the theory that coordination among competing automakers constituted an unlawful restraint of trade.⁴⁹ Delrahim publicly defended the probe through the NSPE, stating that the loftiest of purported motivations did not excuse anticompetitive collusion among rivals.⁵⁰ Career DOJ staff reported having grave concerns about opening the investigation, and a subsequent preliminary review by the Office of Inspector General (OIG) concluded that the probe raised serious questions about the misuse of antitrust authority for political purposes.⁵¹ A whistleblower testified before Congress that the investigation was an abuse of authority, as there was no legal basis for the advancement of the antitrust theory.⁵²

The investigation was quietly closed in February 2020 without finding competitive harm,⁵³ yet the market consequences were immediate and significant. Weeks after the investigation began—before any legal determination had been made—major automakers

⁴⁵ Sherman Antitrust Act, 15 U.S.C. § 1 (2024).

⁴⁶ Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 692 (1978).

⁴⁷ *Id.* at 692–95; *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 423–24 (1990).

⁴⁸ Balmer, *supra* note 6, at 220.

⁴⁹ Veno et al., *supra* note 7, at 14.

⁵⁰ Balmer, *supra* note 6, at 220.

⁵¹ United States v. Office of the Inspector General, Department of Justice, *Preliminary Review of Allegations Concerning the Antitrust Division's Handling of the Automakers Investigation*, Report No. 24-079 (July 2024).

⁵² Balmer, *supra* note 6, at 226.

⁵³ Veno et al., *supra* note 7, at 14.

withdrew their support for higher federal fuel economy standards and joined the Trump administration's litigation against California's independent regulatory authority.⁵⁴ The coalition collapsed, not because it was proven to be unlawful, but because of the credible threat of liability under the per se rule of the Sherman Act. This was an example of enforcement-as-weaponization: just the threat of investigation destroyed the agreement. The chilling effect is instantaneous in the absence of a statutory safe harbor; the legal architecture cannot absorb that threat before it produces market consequences.

B. The Clean Truck Partnership Investigation (2025)

The investigation into the Clean Truck Partnership presented a closely related but structurally distinct legal question. The investigation centered on whether four heavy-duty truck manufacturers (Daimler Truck, International Motors, PACCAR, and Volvo Group) and their trade association violated antitrust law by entering into a voluntary emissions compliance agreement with the California Air Resources Board (CARB) in exchange for an extended regulatory timeline.⁵⁵ The Clean Truck Partnership, established in 2023, bound manufacturers to California's strict emissions standards in exchange for regulatory predictability, independent of environmental objectives.⁵⁶

The Section 1 framework that governed the automaker investigation applies here, with an additional doctrinal dimension. *Parker v. Brown* (1943) established that private conduct sanctioned as state policy and actively supervised by the state holds immunity from federal antitrust liability under the State Action Doctrine.⁵⁷ The Noerr-Pennington doctrine further protects private parties from antitrust liability for petitioning government actors, including through participation in regulatory

⁵⁴ Balmer, *supra* note 6, at 226.

⁵⁵ Statement of the Fed. Trade Comm. Regarding The Clean Truck Partnership Investigation, File No. 251-0054 (Aug. 12, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/clean-truck-partnership-closing-statement.pdf.

⁵⁶ Cynthia Hanawalt & Andy Fitch, *The FTC Asserts (and Oversteps) Its Antitrust Authority Against a Key Climate Alliance*, Columbia Climate L. Blog (Oct. 27, 2025), <https://blogs.law.columbia.edu/climatechange/2025/10/27/the-ftc-asserts-and-oversteps-its-antitrust-authority-against-a-key-climate-alliance/>.

⁵⁷ *Parker v. Brown*, 317 U.S. 341, 350–52 (1943) (establishing the state action doctrine).

proceedings.⁵⁸ The structure of the Clean Truck Partnership, which bound manufacturers to regulatory standards, did not fall under the enforcement of either doctrine.

The FTC closed the investigation into the Clean Truck Partnership on August 12, 2025, after extracting written commitments from each manufacturer without adjudicating whether the partnership violated antitrust laws.⁵⁹ The closing statement framed the Clean Truck Partnership as competitors agreeing to eliminate competition and reduce output under the guise of ESG objectives.⁶⁰ Scholars have criticized this outcome as overstating the agency's antitrust authority, given the absence of evidence proving the agreement harmed consumers.⁶¹ As a condition of closing, manufacturers were required to declare the Clean Truck Partnership unenforceable, pledge to act independently in selling heavy-duty trucks, commit not to enter into future agreements with a state regulator, and submit to seven years of annual compliance reporting obligations.⁶²

The FTC extracted commitments equivalent to a consent decree without a single merits determination. The Clean Truck Partnership investigation paralleled the automaker investigation: in the absence of a formal statutory framework, investigatory power operated as de facto enforcement. The line between legitimate climate stewardship and impermissible horizontal coordination remains undefined, enabling the rapid dismantling of coalitions.

C. *Texas v. Blackrock, Inc.*

The automaker and Clean Truck Partnership investigations illustrate how enforcement is weaponized against agreements that would likely qualify for safe-harbor protection. *Texas v. BlackRock* presents a similar problem, but different problem that proponents of sustainability agreements must confront. In *Texas v. BlackRock*, defendants invoked the language of climate stewardship to characterize conduct that went beyond what safe-harbor frameworks should protect.⁶³ This case demonstrates

⁵⁸ *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965).

⁵⁹ Statement of the Fed. Trade Comm., *supra* note 55.

⁶⁰ *Id.*

⁶¹ Hanawalt & Fitch, *supra* note 56.

⁶² *Id.*

⁶³ *Texas v. BlackRock, Inc.*, No. 6:24-cv-437-JDK, 2025 U.S. Dist. LEXIS 147891, at *5–6 (E.D. Tex. Aug. 1, 2025).

why blanket immunity for sustainability-labeled coordination could be as dangerous as weaponized uncertainty.

The central legal question in *Texas v. BlackRock* is investigating whether BlackRock, State Street Corporation, and Vanguard Group broke Section 7 of the Clayton Act and Section 1 of the Sherman Act.⁶⁴ Section 7 of the Clayton Act prohibits acquisitions of stock for the primary purpose of weakening competition or creating a monopoly. This provides a safe harbor for passive investors who hold stock for investment purposes rather than anticompetitive effects.⁶⁵ Section 1 of the Sherman Act prohibits horizontal conspiracies in restraint of trade. Because the defendants are the three largest asset managers in the U.S.--with combined stockholdings of up to 34.19% across most major publicly traded coal producers--they hold immense sway over industry-wide action. The plaintiffs alleged the defendants participated in coordinated shareholder engagement and proxy voting to artificially reduce coal output among their held companies. Furthermore, they argued participation in climate investor coalitions, including the Net Zero Asset Managers Initiative (NZAM) and CA 100+, was an attempt to help justify anticompetitive behavior.

Bell Atlantic Corp. v. Twombly (2007) established that a complaint may survive dismissal if it pleads facts plausibly suggesting a conspiracy, going beyond mere parallel conduct to allege a basis for inferring agreement.⁶⁶ The plaintiffs in *Texas v. BlackRock* alleged that the defendants went beyond passive investment.⁶⁷ The three asset managers joined NZAM simultaneously in 2021, made coordinated public statements about NetZero ESG commitments, engaged directly with coal company management through proxy voting and targeted pressure campaigns, and produced measurable market effects.⁶⁸ Between 2019 and 2022, the relevant publicly traded coal companies collectively reduced output by approximately 18-19% while average market prices rose by 21-25%, even as privately held coal producers in the same markets increased production by approximately 6%.⁶⁹ Plaintiffs argued that these output and price effects were causally attributable to the defendants' coordinated shareholder engagement,

⁶⁴ Brandon Bigelow, *FTC Closes Antitrust Investigation Into Pact Between Truck OEMs and California Regulators*, Nelson Mullins, Aug. 18, 2025, <https://www.nelsonmullins.com/insights/insights/ftc-closes-antitrust-investigation-into-pact-between-truck-oems-and-california-regulators>.

⁶⁵ *Texas*, No. 6:24-cv-437-JDK at *16-17.

⁶⁶ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), cited in *Texas* at *14-15.

⁶⁷ *Texas*, No. 6:24-cv-437-JDK at *7-9.

⁶⁸ *Id.* at *7-9, *21-26.

⁶⁹ *Id.* at *27-28.

distinguishing the defendants' conduct from the passive, diversified index-fund stewardship protected under the Clayton Act.⁷⁰ The defendants denied any anticompetitive intent, characterizing their conduct as ordinary portfolio stewardship consistent with long-term fiduciary duties. The court found this defense unpersuasive at the pleading stage, concluding that the defendants actively coordinated management pressure and public climate commitments to suppress industry output.⁷¹ *Texas v. BlackRock* is an example of horizontal coordination between investors, not producers.⁷² Therefore, the court applied the rule-of-reason rather than per se analysis, characterizing the alleged arrangement as the first of its kind for which existing per se categories were not designed.⁷³ In May 2025, the DOJ and FTC filed a joint statement of interest in support of the plaintiffs, drawing a line between permissible climate stewardship and impermissible coordination that produces measurable harm to consumers.⁷⁴

On August 1, 2025, Judge Jeremy Kernodle denied the defendants' motion to dismiss, allowing the case to proceed to discovery, which will continue through 2027.⁷⁵ This ruling does not constitute a finding that the defendants engaged in anticompetitive conduct. It only establishes that the plaintiffs' allegations are sufficient to survive dismissal under *Twombly*.⁷⁶ The alleged conduct, if proven, would constitute an unlawful conspiracy, leaving the merits unresolved.⁷⁷ The motion-to-dismiss ruling establishes the doctrinal gap addressed by this article. The defendants were unaware of the distinction between legitimate climate stewardship and antitrust liability. The court held that the alleged conduct was without precedent in antitrust law.⁷⁸ A statutory safe-harbor framework would have drawn that line in advance. The defendants' alleged conduct, as pleaded, would not have qualified for safe-harbor protection from the beginning. That is not a weakness of the proposed framework, but

⁷⁰ *Texas*, No. 6:24-cv-437-JDK at *34–38.

⁷¹ *Id.* at *35–36.

⁷² *Id.* at *53–54.

⁷³ Helena Grannis, Joseph Kay & Shuangjun Wang, *Shareholder Engagement Considerations in Light of Texas v. BlackRock*, Harv. L. Sch. Forum on Corp. Governance (Aug. 18, 2025), <https://corpgov.law.harvard.edu/2025/08/18/shareholder-engagement-considerations-in-light-of-texas-v-blackrock/>.

⁷⁴ *Texas*, No. 6:24-cv-437-JDK at *14–15.

⁷⁵ *Texas v. BlackRock, Inc.*, No. 6:24-cv-437-JDK (E.D. Tex. May 22, 2025) (DOJ & FTC, Statement of Interest).

⁷⁶ *Texas*, No. 6:24-cv-437-JDK at *14–15.

⁷⁷ *Id.* at *56–57.

⁷⁸ *Id.* at *53–54.

a designed function that helps prevent anticompetitive behavior being masked under the guise of social justice.

D. Two Different Failures, One Common Cause

These failures are not isolated episodes, but parts of a pattern demonstrating a singular structural vulnerability: the absence of a legal framework separating legitimate climate coordination from anticompetitive conduct masked by environmental language. A 2022 Harvard Business Review study found that 60% of companies report being deterred from climate collaboration due to antitrust concerns alone.⁷⁹ Meanwhile, investor climate alliances consistent with both the CWS and long-term fiduciary duties have been structurally impeded by the lack of statutory provisions.⁸⁰

The enforcement pattern these cases reveal operates symmetrically against legitimate and illegitimate coordination. Agencies can initiate investigations against good-faith climate coordination (i.e., the automaker agreement and Clean Truck Partnership), achieving dissolution through uncertainty without ever concluding on the merits.⁸¹ Alternatively, private actors can invoke sustainability rhetoric characterized as climate stewardship, which is a horizontal output-restriction conspiracy. Neither the Chicago School's reliance on quantifiable consumer welfare metrics nor the Neo-Brandeisian emphasis on structural oversight has produced a rule capable of resolving this ambiguity, as both lack clear statutory guidance. Explicit rules must be created to determine what qualifies for conditional protection.

III. SOLUTIONS

A. Comparative Frameworks

The European Union (EU) 2023 Revised Horizontal Cooperation Guidelines offer a comparative framework for understanding how sustainability coordination can be reconciled with competition law. After the guidelines were enacted, member states began approving concrete sustainability agreements across industries, from shared

⁷⁹ Gasparini et al., *supra* note 42, at 7.

⁸⁰ Amelia Miazad, *Investor Climate Alliances*, 102 Wash. U. L. Rev. 797, 832 (2025).

⁸¹ Balmer, *supra* note 6, at 226; Veno et al., *supra* note 7, at 14.

plastic reuse systems in Germany to coordinated environmental reporting among Dutch banks.⁸²

Chapter 9 established that horizontal coordination pursuing environmental objectives was not prohibited under Article 101 of the Treaty on the Functioning of the European Union, provided that it passed a structured four-part exemption analysis.⁸³ To qualify for individual exemption, an agreement must (1) demonstrate objective, concrete, and verifiable efficiency gains, (2) ensure that restrictions of competition are indispensable to achieving those gains, (3) pass a fair share of the resulting benefits to customers, and (4) preserve competition on at least one parameter in the relevant market.⁸⁴ Concrete consumer benefit requirements are consistent with the Chicago School CWS and follow the quantitative benchwork used by U.S. courts under the rule-of-reason analysis. The guidelines also provide a softer safe harbor for sustainability standardization agreements that meet seven additional structural conditions. These agreements are unlikely to produce significant negative effects on competition and fall outside of the prohibition entirely.⁸⁵ This aligns with the U.S. distinction between per se immunity and rule-of-reason treatment. Overall, the EU framework has several features that are directly transferable to the U.S. legal context.

However, the institutional and constitutional features of the EU's regulatory architecture cannot be directly utilized in the U.S. The European Commission's competition directorate exercises centralized, prospective review authority, which simply does not exist in the U.S. Neither the DOJ nor the FTC possesses the ability to give firms informal guidance on entering into sustainability agreements.⁸⁶ The EU's broader regulatory impact assessment framework contains constitutional allocations of authority that differ widely from the U.S. separation of powers and role of administrative agencies. This means that any climate-cooperation framework must be

⁸² Kranendonk & Strous, *supra* note 20.

⁸³ *European Commission*, *supra* note 18, at ch. 9.

⁸⁴ Lisa Wright & Helen Byrne, *European Commission Clarifies Sustainability Rules in Revised Horizontal Guidelines*, Saughter and May (June 12, 2023),

<https://www.slaughterandmay.com/insights/importedcontent/european-commission-clarifies-sustainability-rules-in-revised-horizontal-guidelines/>.

⁸⁵ Nanna Krabbe et al., *The New EU Regime for Horizontal Agreements: Sustainability on the Menu*, Bird & Bird (July 19, 2023),

<https://www.twobirds.com/en/insights/2023/global/the-new-eu-regime-for-horizontal-agreements-sustainability>.

⁸⁶ Morrison Foerster, *Sustainability and Antitrust: Do the EU Commission's New Horizontal Guidelines Bring Fresh Momentum?* (June 28, 2023),

<https://www.mofo.com/resources/insights/230626-legal-certainty-for-companies>.

embedded within legislative precedent. Congress has supplied a template: NCRPA and SDOAA are examples of conditional safe harbors for private coordination in cases of market failure. Under the NCRPA, joint ventures that disclose their activities to the DOJ and FTC within ninety days of formation receive rule-of-reason treatment for conduct within the scope of the disclosed research venture, limiting their antitrust damage exposure.⁸⁷ The SDOAA extends equivalent protections to private standard-setting bodies, conditioning antitrust leniency on openness, balanced participation, due process, and disclosure.⁸⁸ Both statutes share a critical feature: they do not premise protection on the social value of the coordinated activity, but on amending collective action failures that competition has not solved. Climate change presents a similar structural justification. These pieces of legislation are not mere analogies, but templates from which the proposed statute is derived.

B. Reform Proposals

Scholars have also proposed two reform measures for complementary institutional instruments to safe-harbor structures. The first is an expansion of the CWS through the Social Cost of Carbon (SCC) as an analytical instrument within antitrust rule-of-reason review. The CWS currently analyzes only the immediate competitive costs of sustainability coordination while ignoring long-run economic harms from unchecked emissions. Incorporating the SCC would allow courts assessing disclosed sustainability agreements to weigh the long-run consumer welfare benefits of emissions reduction against the short-run competitive costs of coordination.⁸⁹ This would satisfy Chicago School scholars who center economic analysis in making rulings on antitrust cases. Although it has been used for policymaking and review in other federal agencies, this is far from a perfect instrument. Quantitative estimates range from seven to seventy dollars per ton for 2015 emissions, worsened by the absence of a standardized emissions reporting system.⁹⁰ This emphasizes the need for a structured reporting infrastructure to generate reliable emissions data.

⁸⁷ National Cooperative Research and Production Act, 15 U.S.C. §§ 4301–4306; U.S. Dep't of Justice Antitrust Division, *Filing a Notification Under the NCRPA*, <https://www.justice.gov/atr/filing-notification-under-ncrpa> (last visited Jan. 13, 2026).

⁸⁸ Standards Development Organization Advancement Act of 2004, Pub. L. No. 108-237, 118 Stat. 661 (2004) (codified at 15 U.S.C. §§ 4301–4306).

⁸⁹ Trip Johnson, *Climate Action's Antitrust Paradox*, 55 *Env'tl. L. Rep.* 10336, 10344 (2025).

⁹⁰ William D. Nordhaus, *Revisiting the Social Cost of Carbon*, 114 *Proc. Nat'l Acad. Sci.* 1518, 1520 (2017).

The second complementary proposal is to expand the rule-of-reason framework to account for environmental externalities. Several scholars have argued that traditional rule-of-reason analysis is artificially narrow in the climate context because it ignores long-term efficiency gains and social harms associated with climate mitigation.⁹¹ Under an expanded framework, courts would not only analyze whether a restraint reduces competition through measured effects, but also whether it is reasonably tailored to achieve legitimate environmental objectives. The proposal only requires that courts apply the rule-of-reason analysis with the same contextual flexibility they have historically shown with novel forms of coordination. This would function effectively alongside the disclosure and periodic review requirements of a sustainability agreement structure, providing courts with the factual record needed to conduct an expanded analysis.

C. Policy Recommendation

The first condition of the proposed Climate Sustainability Agreement Act is mandatory disclosure to the DOJ and FTC. Modeled after the NCRPA, participating entities would be required to file the terms, participants, objectives, and proposed duration of their agreement before implementation. This solves the fundamental problem of legal ambiguity for participating private entities and government agencies. Additionally, it addresses the worries of Chicago school scholars that sustainability coordination cannot receive antitrust protection until its consumer welfare effects can be verifiably measured.⁹² As currently structured, sustainability reporting is voluntary, inconsistent, and disconnected from business decisions. Instead, mandatory prior disclosure helps standardize comparable emissions through methods such as the SCC, making antitrust analysis of sustainability agreements practically administrable.⁹³ Although disclosure does not guarantee protection, it can help agencies identify competitive concerns before coalitions form, rather than retroactively punishing market damage.

The second condition is public transparency, requiring that disclosed agreements be published in the Federal Register and making their terms, participants, and

⁹¹ Michael A. Carrier, *An Antitrust Framework for Climate Change*, 9 Nw. J. Tech. & Intell. Prop. 513, 532 (2011).

⁹² Albert H. Choi & Daniel A. Crane, *Environmentalism and Antitrust*, 42 Yale J. on Reg. 944, 946–948 (2025).

⁹³ William D. Nordhaus, *Revisiting the Social Cost of Carbon*, 114 Proc. Nat'l Acad. Sci. 1518, 1520 (2017).

objectives visible to the public. This condition responds to the Neo-Brandeisian concern – shared by FTC Chair Lina Khan – that sustainability coordination, however well-intentioned, represents private sectors exercising quasi-legislative authority over markets.⁹⁴ The BlackRock defendants’ coordination illustrates precisely why this concern is legitimate: controlling market behavior without any prior disclosure required. Although public transparency does not eliminate private governance, it subjects it to the kind of scrutiny that helps legitimize it. Publishing agreement details to be available to any competitor, regulator, or member of the public is the structural difference that distinguishes legitimate climate stewardship from the harmful coordination that BlackRock allegedly represents.

The third condition is nondiscriminatory participation, requiring that any competitor operating in the relevant market be permitted to join a sustainability agreement on the same terms as existing participants, without exclusion based on competitive position or market share. This responds to concerns raised that industry-wide sustainability standards can function as entry barriers when incumbents balance compliance thresholds to their own cost structures rather than genuine environmental objectives.⁹⁵ An agreement that excludes competitors from participation is simply a cartel with environmental branding. The nondiscriminatory participation requirement draws that line in bold, mirroring the openness and balanced participation requirements that condition protection under the SDOAA. Critically, this condition addresses the concern that broad statutory exemptions risk creating entry barriers that disadvantage new market entrants who cannot afford compliance costs that incumbent-focused standards impose. An agreement open to all competitors on equal terms cannot simultaneously function as an exclusionary mechanism, because the access condition and the exclusionary purpose are structurally incompatible.

The fourth and most important condition is a categorical prohibition on any agreement affecting prices, output, or market allocation with no exception for sustainability objectives. This responds to the strongest objection any safe-harbor

⁹⁴ FTC, Chair Lina M. Khan, *Remarks at the Federalist Society* (Nov. 10, 2023, 11:15 AM), reported in Robert Freedman, *ESG Promises Won't Help Win Antitrust Approval, Khan Says*, Legal Dive (Nov. 10, 2023), <https://www.legaldive.com/news/esg-promises-wont-help-win-antitrust-approval-khan-says/699521/>; Duane Morris, *FTC Reminds Companies There Is No "Environmental Justice" Exemption for Anticompetitive Conduct* (Oct. 3, 2024), https://www.duanemorris.com/alerts/ftc_reminds_companies_there_is_no_environmental_justice_exemption_anticompetitive_conduct_1024.html.

⁹⁵ Lindeboom, *supra* note 34, at 404.

statute must confront: that statutory protection risks creating blanket immunity that shields anticompetitive conduct behind environmental rhetoric. The categorical output prohibition resolves this concern by codifying in advance the precise line that the DOJ and FTC drew in their joint statement of interest in *Texas v. BlackRock*: permissible climate stewardship ends where coordination discourages competition among portfolio companies in ways that suppress output and raise consumer prices.⁹⁶ This concern has been echoed by both the Republican state attorneys general in this case, as well as democrats like Khan, who stated that a specific environmental exemption could only be provided by Congress and even then must not function as a shield for anticompetitive conduct.⁹⁷ The *BlackRock* defendants' alleged conduct would fail this condition explicitly, receiving no safe-harbor protection and remaining subject to full antitrust enforcement, including per se liability where applicable. Khan's position is instructive: she stated that only Congress could provide such an exemption, which is precisely what this proposal does. Together, the four conditions constitute a framework that is neither a blanket exemption nor a continuation of the current enforcement vacuum, but grounded in best practice, domestic legal precedent, and directly responds to enforcement failures.

CONCLUSION

This tension between antitrust law and private climate cooperation reflects a deeper structural failure in American environmental governance. As federal and international regulatory approaches have faltered, private sustainability agreements have emerged as a complementary mechanism for large-scale environmental coordination. However, as this article has demonstrated, the absence of a formal statutory framework has produced two simultaneous failures. On one hand, there is the weaponization of investigatory power against legitimate climate coalitions, and on the other is the exploitation of environmental rhetoric as cover for genuinely anticompetitive conduct. As illustrated through the cases examined in Section II, without clear statutory rules, enforcement agencies fill the vacuum arbitrarily, courts are left to judge without an applicable doctrine, and private actors hesitate in the face of uncertainty. Overall, this creates a general inefficiency, allowing investigatory power and its accompanying bureaucratic burden of time and money to be used as a political

⁹⁶ *Texas v. BlackRock, Inc.*, No. 6:24-cv-437-JDK (E.D. Tex. May 22, 2025) (DOJ & FTC, Statement of Interest).

⁹⁷ Duane Morris, *supra* note 94; *Texas*, No. 6:24-cv-437-JDK.

tool against private actors.

What is needed is a narrowly tailored federal statute where private entities seeking to enter sustainability agreements would disclose their terms and participants to the DOJ and FTC before implementation. In exchange, agreements would receive conditional protection for per se antitrust liability and remain subject to rule-of-reason analysis. This is conditional on four requirements: public transparency, nondiscriminatory participation, categorical prohibition on price or output coordination, and periodic agency review. Modeled after the NCRPA and the EU's 2023 Revised Horizontal Cooperation Guidelines, this proposal draws from working legislation and seeks to satisfy both ends of the antitrust spectrum. From the Chicago School, it incorporates the importance of quantifiable, verifiable standards as necessary complements to any coordination framework. From the Neo-Brandeisian school, it creates structural prerequisites for democratically legitimate coordination. Most importantly, the framework is not a moral carveout from antitrust law, but a tactical response to the structural market failure of climate change.

Despite these strengths, the effectiveness of this or any proposal depends on institutional and political conditions that future legislative work must address more precisely. The enforcement pattern of agencies deploying investigative power against voluntary climate coalitions exists regardless of legal merit, and a statutory safe harbor does not fully eliminate this space. Moreover, the categorical prohibition on price and output coordination similarly requires a more precise statutory definition than this article has provided. The boundary between environmental standard-setting and output restriction is a novel idea and not self-defining. Furthermore, a disclosure-based safe harbor addresses the threat of per se liability but does not protect compliance agreements from the chilling effect of litigation costs.

Texas v. BlackRock will proceed through discovery until at least 2027, a timeline that would deter most firms from entering into a sustainability agreement. In order to create a more robust and politically durable version of the framework proposed here, complementary legislation needs to address these issues as scholars and legislators collaborate at the intersection of antitrust law and climate governance. The goal is not to create a corporate loophole or to overregulate, but to provide a meaningful complement for federal and international regulatory approaches to collectively addressing the climate crisis.