

# CONVENING FOR (CLIMATE) CHANGE: THE CONSTITUTIONAL CASE FOR A U.S. CLIMATE ASSEMBLY

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## INTRODUCTION

Since the 1980s, governments around the world have responded to climate change and its attendant effects with increasing concern and urgency.<sup>1</sup> Climate change—the process through which Earth’s long-term temperatures and weather patterns change<sup>2</sup>—has become more severe in recent years.<sup>3</sup> According to several United Nations reports, preventing global temperatures from rising more than 1.5°C over pre-industrial levels is crucial to keeping climate change manageable.<sup>4</sup> In response to this serious global threat, states have reached several international agreements to limit their national production of greenhouse gas emissions—the leading contributor to global warming<sup>5</sup>—and assist others in doing the same.<sup>6</sup> However, current global climate policies fall far short of the 1.5°C goal, with the world on track to reach nearly 3.0°C of warming above pre-industrial levels by 2100 if states

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<sup>1</sup> See Peter Jackson, *From Stockholm to Kyoto: A Brief History of Climate Change*, UNITED NATIONS (June 2007), <https://www.un.org/en/chronicle/article/stockholm-kyoto-brief-history-climate-change> [<https://perma.cc/9LBS-9Y6C>].

<sup>2</sup> *What Is Climate Change?*, UNITED NATIONS, <https://www.un.org/en/climatechange/what-is-climate-change> [<https://perma.cc/GY7Y-46VH>] (last visited Apr. 30, 2024).

<sup>3</sup> *Every Rise in Global Warming Matters; Time to Act Now*, GULF TIMES (Sept. 18, 2021), <https://www.gulf-times.com/story/700658/every-rise-in-global-warming-matters-time-to-act-now> [<https://perma.cc/AEY9-UBNK>] (“And emissions continue to rise. As a result, the Earth is now about 1.1°C warmer than it was in the late 1800s. The last decade (2011–2020) was the warmest on record.”).

<sup>4</sup> See *What Is Climate Change?*, *supra* note 2.

<sup>5</sup> *Id.* (“But since the 1800s, human activities have been the main driver of climate change . . . primarily due to burning fossil fuels like coal, oil and gas.”).

<sup>6</sup> *Id.* (“We also have global frameworks and agreements to guide progress, . . . . Three broad categories of action are: cutting emissions, adapting to climate impacts and financing required adjustments.”).

do not take more aggressive climate action.<sup>7</sup> A 3.0°C increase would be nothing less than catastrophic: unlivable temperatures in the tropics; frequent storm surges and severe flooding in coastal cities; widespread, extreme droughts; mass migration of climate refugees; and water conflicts between neighboring countries.<sup>8</sup> Evidently, current climate policies are inadequate and must be augmented. As the world's top greenhouse gas emitter after China, the United States (U.S.) can significantly affect global climate change.<sup>9</sup> However, a strong partisan political divide hampers American climate policy, resulting in inconsistent and contradictory climate policy across ideologically opposed presidential administrations.<sup>10</sup>

Given the importance of U.S. climate action, the current political gridlock demands creative solutions both to forge a new political consensus on climate action and to spur action from policymakers. Many other countries have responded to this need by convening citizens' assemblies for climate, also known as climate assemblies, to formulate climate policy recommendations.<sup>11</sup> Although citizens' assemblies have met with varying levels of success,<sup>12</sup> they have generally produced positive outcomes.<sup>13</sup>

This Note argues that a national U.S. Citizens' Assembly for Climate would not violate the non-delegation doctrine which prevents Congress from improperly delegating its constitutional legislative power to another body. A climate assembly could potentially be authorized in several ways; this Note explores that of Congress convening a climate assembly through statute, either as an independent body or as a

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<sup>7</sup> *Id.* ("Yet policies currently in place point to a 3°C temperature rise by the end of the century."); *The CAT Thermometer*, CLIMATE ACTION TRACKER, <https://climateactiontracker.org/global/cat-thermometer/> [<https://perma.cc/KH8X-TKUV>] (last visited Apr. 30, 2024) (showing that current global climate policies will likely cause an increase of 2.7°C over pre-industrial levels by 2100).

<sup>8</sup> *See What Three Degrees of Global Warming Looks Like*, THE ECONOMIST (Oct. 31, 2021), <https://youtu.be/uynhvHZUOOo> [<https://perma.cc/9D2B-P6YF>].

<sup>9</sup> *See Historical GHG Emissions*, CLIMATEWATCH, [https://www.climatewatchdata.org/ghg-emissions?end\\_year=2019&start\\_year=1990](https://www.climatewatchdata.org/ghg-emissions?end_year=2019&start_year=1990) [<https://perma.cc/57M8-XXKL>] (last visited Apr. 30, 2024).

<sup>10</sup> *See infra* Section I.A.

<sup>11</sup> *See National Climate Assemblies*, KNOCA, <https://knoca.eu/national-climate-assemblies/> [<https://perma.cc/2QPX-58VJ>] (last visited Apr. 30, 2024) (listing Ireland, France, the United Kingdom, Scotland, Finland, Denmark, Germany, Austria, Luxembourg, Poland, and Spain as having held climate assemblies).

<sup>12</sup> *See* Michaela Palese, *The Irish Abortion Referendum: How a Citizens' Assembly Helped to Break Years of Political Deadlock*, ELECTORAL REFORM SOC'Y (May 29, 2018), <https://www.electoral-reform.org.uk/the-irish-abortion-referendum-how-a-citizens-assembly-helped-to-break-years-of-political-deadlock/> [<https://perma.cc/7MZG-2AQZ>]; Diarmuid Torney, *Deliberative Mini-Publics and the European Green Deal in Turbulent Times: The Irish and French Climate Assemblies*, 9 POL. & GOVERNANCE 380, 386–87 (2021).

<sup>13</sup> *See* Rebecca Wells, *Citizens' Assemblies and Juries on Climate Change: Lessons from Their Use in Practice*, in ADDRESSING THE CLIMATE CRISIS: LOCAL ACTION IN THEORY & PRAC. 119, 121 (Candice Howarth et al. eds., 2022).

body under the authority of the Environmental Protection Agency. Part I examines the current state of American climate policy and the political debate surrounding it, putting forward a case for a novel approach,<sup>14</sup> and also examines the concept of climate assemblies, detailing their composition and function, and briefly reviews the experience of citizens' assemblies (those focused on climate policy and other policies) in other countries as well as the experience of the Washington State climate assembly.<sup>15</sup> Part II examines Congress's power to authorize and delegate power to a U.S. Climate Assembly.<sup>16</sup> This Part also explores the feasibility of Congress's establishing a U.S. Climate Assembly under the Environmental Protection Agency.<sup>17</sup> Part III proposes how Congress could design a U.S. Climate Assembly and analyzes potential challenges in its structure and function.<sup>18</sup> The Conclusion summarizes these sections and offers further remarks on the feasibility and utility of citizens' assemblies in an American political context.<sup>19</sup>

## I. THE POLITICS OF CLIMATE ASSEMBLIES

### A. *The Deadlocked Nature of American Climate Politics*

Climate change is an important issue in American politics, as shown by the large portion of American voters highly concerned with it.<sup>20</sup> The American public largely supports climate action, with 65% of Americans desiring increased action from the federal government to address climate change as of 2020.<sup>21</sup> However, the consensus appears to break down once political party identification is considered: although 64% of Americans accept the scientific consensus that human activity causes climate

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<sup>14</sup> See *infra* Section I.A.

<sup>15</sup> See *infra* Section I.B.

<sup>16</sup> See *infra* Part II.

<sup>17</sup> See *id.*

<sup>18</sup> See *infra* Part III.

<sup>19</sup> See *infra* Conclusion.

<sup>20</sup> See *Important Issues in the 2020 Election*, PEW RSCH. CTR. (Aug. 13, 2020), <https://www.pewresearch.org/politics/2020/08/13/important-issues-in-the-2020-election/> [<https://perma.cc/GPW7-GCZM>] (showing that 42% of registered voters named climate change a “very important” issue in determining their vote in the 2020 presidential election); Katherine Schaeffer & Ted Van Green, *Key Facts About U.S. Voter Priorities Ahead of the 2022 Mid-term Elections*, PEW RSCH. CTR. (Nov. 3, 2022), <https://www.pewresearch.org/fact-tank/2022/11/03/key-facts-about-u-s-voter-priorities-ahead-of-the-2022-midterm-elections/> [<https://perma.cc/XL8G-5UMD>] (showing that 38% of registered voters named climate change a “very important” issue in determining their vote in the 2022 midterm elections).

<sup>21</sup> Alec Tyson & Brian Kennedy, *Two-Thirds of Americans Think Government Should Do More on Climate*, PEW RSCH. CTR. (June 23, 2020), <https://www.pewresearch.org/science/2020/06/23/two-thirds-of-americans-think-government-should-do-more-on-climate/> [<https://perma.cc/VV5Z-EEXY>].

change, this public consensus on climate change is not reflected across the partisan divide.<sup>22</sup> As of 2022, only 29% of Republicans believed climate change's effects had begun while 82% of Democrats believed they had.<sup>23</sup> This partisan divide is reflected in Washington, with 52% of Republicans in the House of Representatives and 60% of Republicans in the Senate qualifying as "climate deniers" as of March 2021.<sup>24</sup>

Because of this strong partisan divide over the basics of climate change and the political gridlock it has created in Congress, the executive has largely enacted federal climate policy on its own.<sup>25</sup> The President has wide-reaching authority to affect climate policy through executive agencies such as the Environmental Protection Agency (EPA), the National Highway Safety Administration, the Department of Transportation, the Department of Energy, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, and the Department of the Interior.<sup>26</sup> The Obama administration used the EPA's regulatory power to enact climate policy, promulgating new regulations to limit greenhouse gas emissions from vehicles, power plants, and oil and gas wells; developing the Clean Power Plan under the authority of the Clean Air Act; and creating climate change adaptation plans.<sup>27</sup> The Obama administration also signed the Paris Agreement,<sup>28</sup> an international treaty that requires states to pursue policies to prevent an average global temperature increase of more than 1.5°C over pre-industrial levels.<sup>29</sup>

The Trump administration used executive power to enact radically different climate policy, represented most clearly by the United States' withdrawal from the Paris Agreement.<sup>30</sup> The Trump administration also reversed the regulations the Obama administration enacted, including repealing the Clean Power Plan, narrowing the scope of emissions reductions rules, eliminating the emissions regulations for oil

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<sup>22</sup> Hari M. Osofsky & Jacqueline Peel, "The Grass Is Not Always Greener" Revisited: Climate Change Regulation Amid Political Polarization, 39 YALE J. REG. 815, 819 (2022) (citing Lydia Saad, *Global Warming Attitudes Frozen Since 2016*, GALLUP (Apr. 5, 2021), <https://news.gallup.com/poll/343025/global-warming-attitudes-frozen-2016.aspx> [<https://perma.cc/LE3F-489U>]).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 820 (citing Ari Drennan & Sally Hardin, *Climate Deniers in the 117th Congress*, CTR. FOR AM. PROGRESS (Mar. 30, 2021), <https://www.americanprogress.org/article/climate-deniers-117th-congress/> [<https://perma.cc/US4X-9FLG>]).

<sup>25</sup> Hari M. Osofsky & Jacqueline Peel, *The Grass Is Not Always Greener: Congressional Dysfunction, Executive Action, and Climate Change in Comparative Perspective*, 91 CHI.-KENT L. REV. 139, 146–54 (2016).

<sup>26</sup> Osofsky & Peel, *supra* note 22, at 826.

<sup>27</sup> *Id.* at 826–27.

<sup>28</sup> *Id.* at 827–28.

<sup>29</sup> *The Paris Agreement*, UNITED NATIONS: CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement> [<https://perma.cc/D3KW-PQ65>] (last visited Apr. 30, 2024).

<sup>30</sup> Osofsky & Peel, *supra* note 22, at 828.

and gas wells, and abandoning climate change adaptation planning.<sup>31</sup> The Trump administration also expanded fossil fuel drilling.<sup>32</sup>

President Biden's inauguration swung the executive pendulum back to the left. Under Biden, the United States rejoined the Paris Agreement,<sup>33</sup> and, although the Biden administration did not attempt to revive the Clean Power Plan, the administration reversed Trump's policies, including the rule Trump put in place to replace the Clean Power Plan.<sup>34</sup> This game of climate policy ping-pong is unsustainable and counterproductive, apparently only reinforcing political intransigence and partisan division. Thus, the time is ripe for a U.S. Citizens' Assembly for Climate to try to break the deadlock.

### *B. What Are Citizens' Assemblies?*

Citizens' assemblies are composed of between 50 and 160 people—"a group small enough to be genuinely deliberative but large enough to be representative,"<sup>35</sup> with "key stakeholders oversee[ing] the process."<sup>36</sup> Participants discuss issues, receive expert input, and ultimately create policy recommendations.<sup>37</sup> Participants are randomly selected and meet for at least twenty hours total;<sup>38</sup> this time requirement reflects the need for in-depth deliberation.<sup>39</sup> Citizens' assemblies are not lawmaking bodies—their recommendations can be accepted or rejected by a legislature or

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<sup>31</sup> *Id.* at 829.

<sup>32</sup> *Id.* at 830.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 831–32.

<sup>35</sup> Wells, *supra* note 13, at 121 (citing Peter Bryant, *Citizens' Assemblies, Citizens' Juries and Climate Change*, SHARED FUTURE (Feb. 18, 2019), <https://sharedfuturecic.org.uk/citizens-assemblies-citizens-juries-and-climate-change/> [<https://perma.cc/TTV7-7FWC>]); Jennifer Roberts & Oliver Escobar, *Involving Communities in Deliberation: A Study of Three Citizens' Juries on Onshore Wind Farms in Scotland*, CLIMATEXCHANGE (May 2015), [https://www.climatechange.org.uk/media/1444/citizens\\_juries\\_report\\_exec\\_summary.pdf](https://www.climatechange.org.uk/media/1444/citizens_juries_report_exec_summary.pdf) [<https://perma.cc/FE7M-XZ9M>]; Robert E. Goodin & John S. Dryzek, *Deliberative Impacts: The Macro-Political Uptake of Mini-Publics*, 34 POL. & SEC. 219 (2006).

<sup>36</sup> Wells, *supra* note 13, at 121 (citing Tom Wakeford et al., *Refashioning Citizens' Juries: Participatory Democracy in Action*, in THE SAGE HANDBOOK OF ACTION RESEARCH 230, 230 (Hilary Bradbury Huang ed., 2015)).

<sup>37</sup> *Id.* (first citing Goodin & Dryzek, *supra* note 35; then citing Roberts & Escobar, *supra* note 35; and then citing Graham Smith & Corinne Wales, *Citizens' Juries and Deliberative Democracy*, 48 POL. STUDIES 51 (2000)).

<sup>38</sup> *Id.* at 123 (first citing Lizzie Cain & Gemma Moore, *Evaluation of Camden Council's Citizens' Assembly on the Climate Crisis*, UNIV. COLL. LONDON (2019), <https://www.camden.gov.uk/documents/20142/0/FINAL+UCL+Evaluation+of+Camden+Council%27s+Citizens%27+Assembly+on+the+Climate+Crisis.pdf/e3f39960-76ce-111d-656b-6154465fc095?t=1579799081501> [<https://perma.cc/3DUA-CGS6>]; and then citing Claire Mellier-Wilson & S. Toy, *UK Climate Change Citizens' Assemblies & Juries*, INVOLVE (2020), <https://archive.involve.org.uk/resources/case-studies/uk-climate-change-citizens-assemblies-citizens-juries> [<https://perma.cc/5MEW-HKWZ>]).

<sup>39</sup> Wells, *supra* note 13, at 121.

executive.<sup>40</sup> In this way, citizens' assemblies serve to provide public input without circumventing or undermining the democratic mandate of elected officials.

### 1. Climate Assemblies Outside the United States

The Spanish Climate Assembly, which completed its work in May 2022,<sup>41</sup> exemplifies how such a body functions.<sup>42</sup> The Spanish government established the Climate Assembly to generate recommendations on how “to achieve a fairer and safer Spain in the face of climate change.”<sup>43</sup> The Assembly comprised 100 randomly selected participants reflecting the demographic diversity of the country: fifty-one women and forty-nine men; people as young as sixteen and as old as seventy-five; people with only a primary or secondary education, those with a university education, and those at all levels between; eighty-nine Spaniards and eleven foreigners residing in Spain; people from each province (in proportion to their populations); and people from communities smaller than 10,000 people to those larger than 100,000 people.<sup>44</sup> The Assembly met from October 2021 to May 2022, with five virtual sessions and one in-person session.<sup>45</sup> Participants received €650 if they attended all five sessions, and their travel costs were covered for the Assembly's final in-person session.<sup>46</sup> At the end of the process, the Assembly presented its recommendations, 172 in total, to the Spanish cabinet;<sup>47</sup> it later presented them to the legislature as well.<sup>48</sup>

<sup>40</sup> *Id.*

<sup>41</sup> *172 Recommendations for Averting Climate Crisis*, BÜRGERRAT, <https://www.buergerrat.de/en/news/172-recommendations-for-averting-the-climate-crisis/> [<https://perma.cc/MW9M-336S>] (last visited Apr. 30, 2024).

<sup>42</sup> *See generally La Asamblea [The Assembly]*, ASAMBLEA CIUDADANA PARA EL CLIMA [CITIZENS' ASSEMBLY FOR CLIMATE], <https://asambleaciudadanadelcambioclimatico.es/la-asamblea-por-el-clima/> [<https://perma.cc/85VA-Y4D3>] (last visited Apr. 30, 2024) (website translated from Spanish to English by Google Translate).

<sup>43</sup> *Id.*

<sup>44</sup> *100 Participantes [100 Participants]*, ASAMBLEA CIUDADANA PARA EL CLIMA, [https://asambleaciudadanadelcambioclimatico.es/wp-content/uploads/2021/11/ACC\\_composicion\\_100.participantes\\_final\\_001.png](https://asambleaciudadanadelcambioclimatico.es/wp-content/uploads/2021/11/ACC_composicion_100.participantes_final_001.png) [<https://perma.cc/DP6A-G6NL>] (last visited Apr. 30, 2024) (website translated from Spanish to English by Google Translate).

<sup>45</sup> *Preguntas frecuentes [Frequent Questions]*, ASAMBLEA CIUDADANA PARA EL CLIMA [CITIZENS' ASSEMBLY FOR CLIMATE], <https://asambleaciudadanadelcambioclimatico.es/preguntas-frecuentes/> [<https://perma.cc/DGC4-ZSQ8>] (last visited Apr. 30, 2024) (website translated from Spanish to English by Google Translate); *La Asamblea Ciudadana para el Clima celebra su última sesión, en la que aprobará sus recomendaciones [The Citizens' Assembly for Climate holds its last session, in which it will approve its recommendations]*, ASAMBLEA CIUDADANA PARA EL CLIMA (May 19, 2022), <https://asambleaciudadanadelcambioclimatico.es/la-asamblea-ciudadana-para-el-clima-celebra-su-ultima-sesion-en-la-que-aprobara-sus-recomendaciones/> [<https://perma.cc/5JXN-WV4N>] (website translated from Spanish to English by Google Translate).

<sup>46</sup> *Id.*

<sup>47</sup> BÜRGERRAT, *supra* note 41.

<sup>48</sup> *La Asamblea Ciudadana para el Clima Presenta sus recomendaciones al Congreso*

In addition to Spain, several other countries have convened citizens' assemblies over the past few years,<sup>49</sup> producing mixed results. The Irish Citizens' Assembly was probably the most successful one so far, producing recommendations that led directly to the repeal of Ireland's constitutional amendment prohibiting abortion and the passage of a new abortion law with broad public support.<sup>50</sup> On the other hand, the French Citizens' Convention for Climate, which initially received strong vocal support from President Macron, later lost the President's support, and the French parliament watered down the Convention's legislative recommendations, leaving the participants frustrated.<sup>51</sup>

## 2. U.S. Climate Assemblies

In the United States, only three citizens' assemblies have been convened.<sup>52</sup> All were held at a subnational level (two were state-level and one was municipal), only one covered climate policy, and none were organized or officially supported by government.<sup>53</sup> The 2020 Oregon Citizen Assembly was organized by Healthy Democracy, a non-partisan non-governmental organization focusing on deliberative democracy initiatives,<sup>54</sup> and Oregon's Kitchen Table, a non-governmental organization focusing on promoting citizen political engagement in Oregon,<sup>55</sup> to address the COVID-19

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[*The Citizens' Assembly for Climate presents its recommendations to Congress*], ASAMBLEA CIUDADANA PARA EL CLIMA (Oct. 24, 2022), <https://asambleaciudadanadelcambioclimatico.es/la-asamblea-ciudadana-para-el-clima-presenta-sus-recomendaciones-al-congreso/> [<https://perma.cc/Z2YG-LRMD>] (website translated from Spanish to English by Google Translate).

<sup>49</sup> *Citizens' Assemblies Worldwide*, BÜRGERRAT, <https://www.buergerrat.de/en/citizens-assemblies/citizens-assemblies-worldwide/> [<https://perma.cc/QV5K-CCNM>] (last visited Apr. 30, 2024).

<sup>50</sup> Palese, *supra* note 12. See generally *About the Citizens' Assembly 2016–2018*, THE CITIZENS' ASSEMBLY, <https://citizensassembly.ie/overview-previous-assemblies/2016-2018-citizens-assembly/> [<https://perma.cc/7YZ6-PAGU>] (last visited Apr. 30, 2024).

<sup>51</sup> Torney, *supra* note 12, at 386–87. See generally CONVENTION CITOYENNE POUR LE CLIMAT [CITIZENS' CONVENTION FOR CLIMATE], <https://www.conventioncitoyennepourleclimat.fr/> [<https://perma.cc/8ESU-UHKZ>] (last visited Apr. 30, 2024).

<sup>52</sup> See BÜRGERRAT, *supra* note 49. See generally *2020 Oregon Citizen Assembly Pilot on COVID-19 Recovery*, HEALTHY DEMOCRACY, <https://healthydemocracy.org/what-we-do/local-government-work/oregon-assembly-on-covid-recovery/> [<https://perma.cc/Q85H-B7XE>] (last visited Apr. 30, 2024); *Petaluma Fairgrounds Advisory Panel*, HEALTHY DEMOCRACY, <https://healthydemocracy.org/what-we-do/local-government-work/2022-petaluma-fairgrounds-advisory-panel/> [<https://perma.cc/GC6T-QVG8>] (last visited Apr. 30, 2024); WASH. CLIMATE ASSEMBLY, <https://www.waclimateassembly.org/> [<https://perma.cc/UHY7-YXL7>] (last visited Apr. 30, 2024).

<sup>53</sup> See BÜRGERRAT, *supra* note 49.

<sup>54</sup> HEALTHY DEMOCRACY, <https://healthydemocracy.org/> [<https://perma.cc/D23B-EGHX>] (last visited Apr. 30, 2024).

<sup>55</sup> *About*, OR.'S KITCHEN TABLE, <https://www.oregonskitchentable.org/about> [<https://perma.cc/53L9-8MMF>] (last visited Apr. 30, 2024).

crisis in the state.<sup>56</sup> It comprised thirty-six participants and met for two hours every week from July 9, 2020 to August 20, 2020, after which it presented its recommendations, covering housing and education, to the public.<sup>57</sup> Unfortunately, the Oregon Citizen Assembly did not meet the requirements of a citizens' assembly as discussed in the relevant literature because it had only thirty-six participants and met for only fourteen hours.<sup>58</sup> It thus fell short of the minimum requirements of 50 to 160 participants and 20 total hours of activity.<sup>59</sup> The role played by experts in advising participants is also unclear, although community stakeholders did participate.<sup>60</sup>

The other state-level citizens' assembly held in the United States was the Washington Climate Assembly, which met from January 12, 2021, to February 27, 2021.<sup>61</sup> Organized by People's Voice on Climate, a Washington state non-partisan non-profit organization focused on addressing climate change through deliberative democracy,<sup>62</sup> and supported by the Cascadia Consulting Group, a consulting firm focused on sustainability, and market research firm Strategic Research Associates,<sup>63</sup> the Washington Climate Assembly sought to address the following question: "How can Washington State equitably design and implement climate mitigation strategies while strengthening communities disproportionately impacted by climate change across the State?"<sup>64</sup> The Assembly involved eighty participants (as well as ten alternates),<sup>65</sup> with seventy-seven participating in the entire process.<sup>66</sup> The demographic composition of the Assembly skewed slightly male, with forty-three men and thirty-seven

<sup>56</sup> *2020 Oregon Citizen Assembly Pilot on COVID-19 Recovery*, HEALTHY DEMOCRACY, <https://healthydemocracy.org/what-we-do/local-government-work/oregon-assembly-on-covid-recovery/> [<https://perma.cc/2W3K-Z5HU>] (last visited Apr. 30, 2024).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See *supra* notes 35, 38 and accompanying text.

<sup>60</sup> See *Citizen Assembly Schedule Day 3, 2020* OR. CITIZEN ASSEMBLY, <https://healthydemocracy.org/wp-content/uploads/2020-Oregon-Citizen-Assembly-Day-3-schedule.pdf> [<https://perma.cc/A4Y6-XGXV>] (last visited Apr. 30, 2024) (documenting a session during which an Oregon state Senator met with participants for a brief question-and-answer session).

<sup>61</sup> *Assembly Details*, WASH. CLIMATE ASSEMBLY, <https://www.waclimateassembly.org/assembly-details> [<https://perma.cc/VAC2-ZDVB>] (last visited Apr. 30, 2024).

<sup>62</sup> *Our Story*, PEOPLE'S VOICE ON CLIMATE, <https://www.peoplesvoiceonclimate.org/our-story> [<https://perma.cc/U94V-2RZ4>] (last visited Apr. 30, 2024).

<sup>63</sup> *WA Citizen Climate Assembly Moves Forward*, OLYMPIC CLIMATE ACTION (Dec. 1, 2020), <https://olyclimate.org/2020/12/01/wa-citizen-climate-assembly-moves-forward/> [<https://perma.cc/JYE6-YRTM>].

<sup>64</sup> *FAQ*, WASH. CLIMATE ASSEMBLY, <https://www.waclimateassembly.org/application-page> [<https://perma.cc/FYC9-YLRZ>] (last visited Apr. 30, 2024).

<sup>65</sup> *Rulebook*, WASH. CLIMATE ASSEMBLY 1, 13, <https://bluedemocracy.pl/wp-content/uploads/2021/08/Washington-State-Climate-Assembly-Rulebook.pdf> [<https://perma.cc/6DFX-YF37>]; *WA Citizen Climate Assembly Moves Forward*, *supra* note 63.

<sup>66</sup> Mandy Godwin, *A First for Washington, Locals Advise Lawmakers on Climate Change*, CROSSCUT (Apr. 16, 2021), <https://crosscut.com/environment/2021/04/first-washington-locals-advise-lawmakers-climate-change> [<https://perma.cc/4QPU-BRM9>].



women; the age of participants ranged from sixteen to over sixty-five; most participants hailed from western Washington; low-income Washingtonians were under-represented; Black and Hispanic residents were over-represented; and college-educated and non-college-educated participants were evenly balanced.<sup>67</sup> Interestingly, and unlike the organizers of the Spanish Climate Assembly,<sup>68</sup> the organizers of the Washington Climate Assembly also took prospective participants' views on climate change into account in their methodology. Only six participants rejected the validity of global warming (with twelve expressing uncertainty), but twenty participants denied that global warming is caused by humans, and thirty participants expressed no concern about global warming.<sup>69</sup> Additionally, the Assembly reflected Washington's political diversity: forty-five of the participants identified themselves as supporting the Democratic Party, twenty-three indicated their support for the Republican Party, and nine expressed support for other parties.<sup>70</sup> The Assembly's meetings consisted of an inaugural meeting, seven learning sessions, five deliberative sessions, and a final voting session.<sup>71</sup> These sessions alternated between two- and three-hour sessions for a total meeting time of thirty-five hours.<sup>72</sup> Unlike the Oregon Assembly,<sup>73</sup> the Washington Climate Assembly met the minimum requirements for a citizens' assembly.<sup>74</sup>

The Washington Climate Assembly involved presentations from over fifty scientific and lay experts, activists, and stakeholders such as Indigenous leaders, community organizers, and trade/industry association representatives who exposed the Assembly participants to different perspectives and possible solutions to climate change challenges.<sup>75</sup> After listening to these presentations, the Assembly participants established "Priority Principles" they believed should guide Washington's climate policy, such as a focus on climate education, reliance on scientific information, and fairness, justice, and equity.<sup>76</sup> The Assembly participants then deliberated policy recommendations in small groups—both their own recommendations and those submitted to the Assembly by members of the public and by the over 120 people who had presented to the Assembly.<sup>77</sup> Ultimately, the Assembly produced 148 recommendations

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<sup>67</sup> WASH. CLIMATE ASSEMBLY, WASHINGTONIANS FINDING SOLUTIONS TOGETHER: WASHINGTON CLIMATE ASSEMBLY FINAL REPORT, at app. H [hereinafter WASH. CLIMATE ASSEMBLY FINAL REPORT], [https://www.waclimateassembly.org/\\_files/ugd/09fdff\\_7123b8b71d304311b075bd5d8460eb06.pdf](https://www.waclimateassembly.org/_files/ugd/09fdff_7123b8b71d304311b075bd5d8460eb06.pdf) [<https://perma.cc/2EZB-7XN3>]. For a comprehensive description of the Assembly's recruitment methodology, see generally *id.* at app. G.

<sup>68</sup> See 100 *Participantes*, *supra* note 44.

<sup>69</sup> See WASH. CLIMATE ASSEMBLY FINAL REPORT, *supra* note 67.

<sup>70</sup> Godwin, *supra* note 66.

<sup>71</sup> *Assembly Details*, *supra* note 61.

<sup>72</sup> *Id.*

<sup>73</sup> See *supra* notes 54–58 and accompanying text.

<sup>74</sup> See *supra* notes 35, 38 and accompanying text.

<sup>75</sup> *Assembly Details*, *supra* note 61; Godwin, *supra* note 66.

<sup>76</sup> WASH. CLIMATE ASSEMBLY FINAL REPORT, *supra* note 67, at 18, 21.

<sup>77</sup> *Id.* at 18.

covering eight topics: “transportation, buildings, energy, natural solutions, circular economies, social policies, education and communication, and governance.”<sup>78</sup> Each recommendation had to be approved by at least 80% of the Assembly’s participants, who weighted their votes by how strongly they supported a particular recommendation.<sup>79</sup> Several of the Assembly’s recommendations aligned with legislative proposals already under consideration in the Washington State Legislature in 2021,<sup>80</sup> of which four were enacted into law.<sup>81</sup>

Overall, climate assemblies are effective. Even the mere convention of a climate assembly can shift the political paradigm in favor of greater climate action, with “both the UK and French Climate Assemblies generat[ing] far more ambitious policies than politicians ha[d] ever proposed.”<sup>82</sup> This is particularly significant considering the failure of the British and French assemblies to achieve the ambitious goals of their participants.<sup>83</sup> Climate assemblies have spurred climate action beyond what was politically possible before their convention.<sup>84</sup> Furthermore, climate assemblies are broadly popular in the United States, France, Germany, and the United Kingdom as of 2020.<sup>85</sup> These trends and outcomes indicate the viability and political potential of a U.S. Climate Assembly.

## II. THE CONSTITUTIONALITY OF CLIMATE ASSEMBLIES

### A. Congress’s Power to Create a U.S. Climate Assembly

#### 1. The “Intelligible Principle” Standard

The Constitution, in its very first article, vests all legislative powers in Congress.<sup>86</sup> The Supreme Court has laid out certain rules governing when and how

<sup>78</sup> Godwin, *supra* note 66. *See generally* WASH. CLIMATE ASSEMBLY FINAL REPORT, *supra* note 67.

<sup>79</sup> Godwin, *supra* note 66; WASH. CLIMATE ASSEMBLY FINAL REPORT, *supra* note 67, at 23.

<sup>80</sup> WASH. CLIMATE ASSEMBLY FINAL REPORT, *supra* note 67, at 25–27.

<sup>81</sup> *See* 2021 Wash. Sess. Laws 1392, 2548, 2567, 2606.

<sup>82</sup> Wells, *supra* note 13, at 121.

<sup>83</sup> *See supra* note 51 and accompanying text; Stephen Elstub, *How Has the UK Climate Assembly Impacted Parliament?*, WESTMINSTER FOUND. FOR DEMOCRACY (Nov. 25, 2021), <https://www.wfd.org/commentary/how-has-uk-climate-assembly-impacted-parliament> [<https://perma.cc/Y9Z4-YZXW>].

<sup>84</sup> Wells, *supra* note 13, at 121.

<sup>85</sup> *Citizen Assemblies and Referendums Are Popular Ideas in All Four Countries*, PEW RSCH. CTR. (Mar. 30, 2021), [https://www.pewresearch.org/global/2021/03/31/many-in-us-western-europe-say-their-political-system-needs-major-reform/pg\\_2021-03-31\\_political-grievances\\_0-04/](https://www.pewresearch.org/global/2021/03/31/many-in-us-western-europe-say-their-political-system-needs-major-reform/pg_2021-03-31_political-grievances_0-04/) [<https://perma.cc/J3YZ-RDFK>] (showing that 79% of Americans support creating citizens’ assemblies).

<sup>86</sup> U.S. CONST. art. I, § 1.

Congress may delegate its powers to other bodies. In *J.W. Hampton v. United States*, the Court first clearly established the principle that Congress may delegate its regulatory power when it articulates, in legislation, “an intelligible principle to which the person or body authorized to [regulate] is directed to conform . . . .”<sup>87</sup> Later, in the landmark case *A.L.A. Schechter Poultry Corp. v. United States*, the Court clarified that while Congress may delegate its regulatory power, it may not “abdicate or . . . transfer to others the essential legislative functions with which it is thus vested.”<sup>88</sup> Since *Schechter*, the Supreme Court has never held a Congressional delegation of power to violate the non-delegation doctrine,<sup>89</sup> although it has found the structure or function of some executive and independent agencies to run afoul of the Constitution on other grounds.<sup>90</sup>

The first step of any non-delegation analysis is determining what kind of power Congress is delegating. Here, a U.S. Climate Assembly would most likely receive legislative power. In *Yakus v. United States*, the Supreme Court defined legislative power broadly as including “the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct . . . .”<sup>91</sup> The Court also clarified that Congress need not “find for itself every fact upon which it desires to base legislative action” nor “make for itself detailed determinations which it has declared to be prerequisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate.”<sup>92</sup> A U.S. Climate Assembly, tasked with investigating, deliberating, and crafting policy recommendations for the normal policymaking bodies of the state,<sup>93</sup> might thus exercise a legislative function under the *Yakus* standard. Congress would have to delegate such a function.<sup>94</sup> But would this delegation be constitutionally permissible?

## 2. Congress’s Power to Delegate to the Sentencing Commission

Two post-*Schechter* cases are relevant to the issue of whether the establishment of a U.S. Citizens’ Assembly for Climate would violate the non-delegation doctrine:

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<sup>87</sup> 276 U.S. 394, 409 (1928).

<sup>88</sup> 295 U.S. 495, 529 (1935).

<sup>89</sup> *Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019).

<sup>90</sup> *See, e.g., INS v. Chadha*, 462 U.S. 919 (1983) (holding that a single-chamber veto of presidential action violated the separation of powers); *Bowsher v. Synar*, 478 U.S. 714 (1986) (holding that Congress’s removal power over an official performing executive functions was unconstitutional); *Clinton v. City of New York*, 524 U.S. 417, 419 (1998) (holding the cancellation procedures of the Line Item Veto Act violated the Presentment Clause, U.S. CONST. art. I, § 7, cl. 2).

<sup>91</sup> 321 U.S. 414, 424 (1944).

<sup>92</sup> *Id.*

<sup>93</sup> Wells, *supra* note 13, at 121 (first citing Goodin & Dryzek, *supra* note 35; then citing Roberts & Escobar, *supra* note 35; and then citing Smith & Wales, *supra* note 37).

<sup>94</sup> *See Yakus*, 321 U.S. at 424.

*Mistretta v. United States* and *Whitman v. American Trucking Ass 'ns*. In *Mistretta*, the Supreme Court considered the constitutionality of the Sentencing Guidelines produced by the U.S. Sentencing Commission.<sup>95</sup> Congress had created the Sentencing Commission to establish uniform standards for federal criminal sentences that would be binding on federal courts, although judges were still allowed some discretion in exceptional cases.<sup>96</sup> The Commission was also authorized to make recommendations to Congress whether to modify the guidelines.<sup>97</sup> Although the Sentencing Commission was established as an independent agency, Congress designated it as existing within the judicial branch and mandated that at least three of its members be federal judges.<sup>98</sup>

Addressing whether Congress had unconstitutionally delegated legislative power to the Sentencing Commission, the Court acknowledged that the demands of modern governance require that Congress be able “to delegate power under broad general directives.”<sup>99</sup> The Court also stated that Congress meets the constitutional standard of permitted delegation when it “clearly delineates the general policy, the public agency which has to apply it, and the boundaries of this delegated authority.”<sup>100</sup> The Court ultimately found that Congress had not improperly delegated legislative power to the Sentencing Commission.<sup>101</sup> In setting clear parameters for the Sentencing Commission—three goals to achieve, four purposes to consider, and a “specific tool” to use—Congress’s delegation was “sufficiently specific and detailed to meet constitutional requirements.”<sup>102</sup> Congress’s further instructions to the Commission strengthened its constitutional footing.<sup>103</sup> The Court specifically noted the specialized nature of the Commission, describing it as an “expert body” charged with an “intricate task,” and emphasized the “significant statutory direction” Congress had given it.<sup>104</sup>

### 3. Congress’s Power to Delegate to the Environmental Protection Agency

In *Whitman v. American Trucking Ass 'ns*, the Court considered whether a provision of the Clean Air Act improperly delegated legislative power to the Environmental Protection Agency by requiring the EPA to set national ambient air quality standards for certain air pollutants.<sup>105</sup> The Court, noting “the first step in assessing whether a statute delegates legislative power is to determine what authority the

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<sup>95</sup> 488 U.S. 361, 361 (1989).

<sup>96</sup> *Id.* at 367.

<sup>97</sup> *Id.* at 369.

<sup>98</sup> *Id.* at 368 (quoting 28 U.S.C. § 991(a) (2008)).

<sup>99</sup> *Id.* at 372.

<sup>100</sup> *Id.* at 372–73 (quoting *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)).

<sup>101</sup> *Id.* at 374.

<sup>102</sup> *Id.*

<sup>103</sup> *See id.* at 374–77.

<sup>104</sup> *Id.* at 412.

<sup>105</sup> 531 U.S. 457, 462 (2001).

statute confers,” first held that the plain meaning of the statute controlled and thus only conferred on the EPA the authority to set such standards according to public health and safety considerations—excluding cost considerations, an interpretation to which the plaintiffs had objected.<sup>106</sup> The Court then turned to the question of “whether the statute has delegated legislative power to the agency,”<sup>107</sup> which would be unconstitutional.<sup>108</sup> The Court reiterated the “intelligible principle” standard laid down in *Hampton*,<sup>109</sup> and it emphasized that “the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred.”<sup>110</sup> Concluding that Congress met the standard of providing “substantial guidance” to the EPA in developing its regulations, the Court found no unconstitutional delegation of Congressional legislative power.<sup>111</sup>

Within this framework, Congress would clearly have the power to establish, through legislation, a U.S. Citizens’ Assembly for Climate and delegate a measure of legislative power to it. Most importantly, a U.S. Climate Assembly would, like all climate assemblies, merely have the power to propose policy recommendations rather than the power to directly implement policies itself.<sup>112</sup> In this way, a U.S. Climate Assembly would be less constitutionally intrusive than the EPA or the Sentencing Commission. Both of those bodies were empowered by Congress to impose binding rules unilaterally whereas Congress or the executive would retain the power to implement the Assembly’s recommendations, depending on the nature of each individual recommendation.<sup>113</sup> This more limited function would also likely satisfy a higher standard, such as that articulated by Justice Scalia in *Mistretta* which focused on the legally binding nature of the Sentencing Commission’s guidelines, asserting that Congress improperly granted the Sentencing Commission legislative power because the guidelines it proposes “have the force and effect of laws,” and it was created “to exercise no governmental power other than the making of laws.”<sup>114</sup>

Issues would more likely arise surrounding the scope of the Assembly’s powers. To ensure the Assembly’s constitutionality, Congress would have to provide the Assembly with sufficient guidance so that its delegated responsibilities and its goals would be clear.<sup>115</sup> These would include such responsibilities as fact-finding, reviewing past and current government policy, considering the views of certain groups of experts, debating proposals, and, of course, preparing recommendations to Congress

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<sup>106</sup> *Id.* at 465.

<sup>107</sup> *Id.* at 472.

<sup>108</sup> *Id.* (citing *Loving v. United States*, 517 U.S. 748, 771 (1996)).

<sup>109</sup> *Id.* (quoting *J.W. Hampton v. United States*, 276 U.S. 394, 409 (1928)).

<sup>110</sup> *Id.* at 475.

<sup>111</sup> *Id.* at 475–76.

<sup>112</sup> *See supra* note 41 and accompanying text.

<sup>113</sup> *See id.*

<sup>114</sup> 488 U.S. 361, 413 (1989) (Scalia, J., dissenting).

<sup>115</sup> *See supra* notes 109–11 and accompanying text.

and the executive.<sup>116</sup> The Assembly's goals would likely include drafting policies that would reduce U.S. greenhouse gas emissions in line with the country's commitments under the Paris Climate Agreement, other international climate agreements, and domestic legislation, as well as exploring innovative approaches to governance and economic development.<sup>117</sup> Congress may also wish for the Assembly to consider fiscal concerns, especially given the growing importance of the budget reconciliation process in Congress's legislative activity.<sup>118</sup>

### *B. Separation of Powers and a U.S. Climate Assembly*

#### 1. Would a U.S. Climate Assembly Be Subject to a Separation of Powers Analysis?

Even after surviving a constitutional challenge on the grounds of improper delegation of legislative power by Congress, a U.S. Climate Assembly would face another hurdle: the issue of whether its existence violates the separation of powers. First, however, the courts would have to determine whether a U.S. Climate Assembly would even be a government body subject to the constitutional separation of powers doctrine.<sup>119</sup> Instructive in answering this question is *Department of Transportation v. Ass'n of American Railroads*, in which the Supreme Court analyzed whether Amtrak is a "governmental entity for purposes of separation of powers analysis under the Constitution."<sup>120</sup> The Court looked to several different factors to answer this question: Amtrak's organizational structure (including the removal procedures for its officers),<sup>121</sup> the eligibility requirements of its officers,<sup>122</sup> the supervision exerted by government branches over Amtrak,<sup>123</sup> Amtrak's organizational goals,<sup>124</sup> and the source of its funding.<sup>125</sup>

The Court found each of these factors to indicate Amtrak's status as a governmental entity: Amtrak's corporate leadership and chief stockholders are chiefly appointed by the President,<sup>126</sup> Amtrak's corporate officers are required to hold

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<sup>116</sup> See *supra* notes 75–77 and accompanying text for the responsibilities of the Washington Climate Assembly.

<sup>117</sup> See, e.g., WASH. CLIMATE ASSEMBLY FINAL REPORT, *supra* note 67, at 23–38.

<sup>118</sup> See Richard Kogan & David Reich, *Introduction to Budget "Reconciliation,"* CTR. ON BUDGET & POL'Y PRIORITIES (May 6, 2022), <https://www.cbpp.org/research/federal-budget/introduction-to-budget-reconciliation> [<https://perma.cc/GA4N-S8L7>].

<sup>119</sup> See, e.g., *Dep't of Transp. v. Ass'n of Am. R.Rs.*, 575 U.S. 43, 45–46 (2015).

<sup>120</sup> *Id.* at 51.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 51–52.

<sup>123</sup> *Id.* at 52.

<sup>124</sup> *Id.* at 53.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 51 (citing 49 U.S.C. § 24302(a)(1)).

certain qualifications pertaining to the transportation industry and to be politically balanced,<sup>127</sup> Congress and the President both exert significant supervision over Amtrak,<sup>128</sup> Amtrak is required by statute to pursue specific goals determined by Congress,<sup>129</sup> and Amtrak is dependent on federal funding.<sup>130</sup> Given the extensive influence of government bodies in Amtrak's structure and operations, the Court found Amtrak to be a governmental entity subject to the constitutional separation of powers, notwithstanding statutory language implying the contrary.<sup>131</sup>

Under the analysis the Court applied in *Ass'n of American Railroads*, a U.S. Climate Assembly would likely be considered a governmental body subject to the constitutional separation of powers. The most significant factor in this analysis is that other government branches—the legislative and the executive—would supervise the Assembly.<sup>132</sup> Just as in other countries, the Assembly would present its findings to the legislature and the executive,<sup>133</sup> and the Assembly would only be allowed to act within the boundaries set by Congress, examining issues and providing recommendations limited to those areas which Congress had instructed it to study.<sup>134</sup> Furthermore, the Assembly's goals would be set by Congress and limited in scope.<sup>135</sup> The Assembly would also receive funding for its operations from the federal government, though it could potentially receive funding from non-governmental organizations as well.<sup>136</sup> As for the qualifications of the members of the Assembly, there are arguments on both sides: certainly, experts would have to be properly credentialed to advise the lay participants, but political balancing may not be

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<sup>127</sup> *Id.* at 51–52 (citing § 24302(a)(1)(C)).

<sup>128</sup> *Id.* at 52–53 (citing § 24315).

<sup>129</sup> *Id.* at 53 (citing § 24101(b), (c)(9), (d); § 24307(a)).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 55 (holding that “for purposes of Amtrak’s status as a federal actor or instrumentality under the Constitution, the practical reality of federal control and supervision prevails over Congress’ [sic] disclaimer of Amtrak’s governmental status.”).

<sup>132</sup> *See id.*

<sup>133</sup> *See, e.g., Pedro Sánchez Receives Recommendations from the Citizens’ Climate Assembly*, LA MONCLOA (June 6, 2022), [https://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2022/20220606\\_climate-assembly.aspx](https://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2022/20220606_climate-assembly.aspx) [<https://perma.cc/W5EX-AYFN>]; *The Government of Spain Sends the Recommendations of the Citizens’ Climate Assembly to Lower House of Parliament*, LA MONCLOA (Nov. 7, 2022), [https://www.lamoncloa.gob.es/lang/en/gobierno/councilministers/Paginas/2022/20220711\\_council.aspx](https://www.lamoncloa.gob.es/lang/en/gobierno/councilministers/Paginas/2022/20220711_council.aspx) [<https://perma.cc/7E84-4EZK>].

<sup>134</sup> *See supra* Section II.A.

<sup>135</sup> *See Preguntas frecuentes, supra* note 45 (detailing the rationale for and mandate of the Assembly).

<sup>136</sup> *See, e.g., id.* (“The financing will be provided by the Ministry for the Ecological Transition and the Demographic Challenge’s own funds, and with external support from foundations such as the European Climate Foundation, which has already supported the governance bodies of other European assemblies.”) (website translated from Spanish to English by Google Translate).

considered (generally, citizens' assemblies aim to be non-partisan rather than bi-partisan).<sup>137</sup> Involving ordinary lay citizens in the Assembly would at first seem to cut against any finding of special qualifications, but the rigorous methodology through which participants would be randomly selected to form a representative "mini-United States" might be considered to meet such a qualification standard.<sup>138</sup> In light of these characteristics, the Assembly would likely be required to meet constitutional standards for properly separated powers as a governmental body.

However, there are several unique qualities to a prospective U.S. Climate Assembly that could convince a court that the body is in fact non-governmental, even for the purposes of a constitutional separation of powers analysis. First, some of the factors from *Ass'n of American Railroads* would not be met by the Assembly. Due to its temporary nature,<sup>139</sup> the Assembly would have no officers appointed by the government,<sup>140</sup> nor would the experts or participants be subject to removal as government officials are. The nature of governmental supervision of the Assembly is also rather different from government supervision of a body like Amtrak. While the Assembly would, of course, submit a final report to the government, it would not submit periodic reports, nor would it change its operations in response to governmental directives.<sup>141</sup>

Beyond the test from *Ass'n of American Railroads*, there are further considerations for why a U.S. Climate Assembly would not be a governmental entity. Unlike a typical government commission—such as the Sentencing Commission, which continues its work to this day<sup>142</sup>—a citizens' assembly is not a permanent body; it only meets to consider the issue or issues for which it was convened and then adjourns (although the assembly may not adjourn for year or more).<sup>143</sup> A citizens' assembly is also not comprised of government officials or political appointees of any

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<sup>137</sup> See ¿Quién puede formar parte de la Asamblea? [Who Can Be Part of the Assembly?], ASAMBLEA CIUDANANA PARA EL CLIMA, <https://asambleaciudadanadelcambioclimatico.es/quien-puede-formar-parte-de-la-asamblea/> [<https://perma.cc/S2QX-C9PS>] (last visited Apr. 30, 2024) (specifying that politicians, their staff, employees of legislative institutions, and employees of political parties or their associated organizations cannot be members of the Assembly) (website translated from Spanish to English by Google Translate).

<sup>138</sup> See *id.*

<sup>139</sup> See *supra* note 49.

<sup>140</sup> See *Lucia v. SEC*, 585 U.S. 237, 245 (2018) (citing *United States v. Germaine*, 99 U.S. 508, 510 (1879)); *Buckley v. Valeo*, 424 U.S. 1, 126 (1976) (holding that federal employees, whose appointment is not restricted by the Constitution's Appointments Clause, are distinguished from officers by the temporary nature of their tenure and lack of governmental authority).

<sup>141</sup> See, e.g., *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 525 (1935).

<sup>142</sup> See generally *U.S. Sentencing Commission to Implement First Step Act with Focus on Compassionate Release*, U.S. SENTENCING COMM'N (Oct. 28, 2022), <https://www.uscc.gov/about/news/press-releases/october-28-2022> [<https://perma.cc/6YRX-7B2K>].

<sup>143</sup> See *supra* notes 41, 48.



sort, again unlike other commissions whose members are directly chosen by a government body.<sup>144</sup> As stated above, the Assembly would have no power to make legally binding rules.<sup>145</sup> Despite these unique characteristics, however, the significance of the Assembly’s work—the depth of its analysis, the breadth of its recommendations, and the innovative nature of the Assembly itself—would most likely lead a court to determine it is subject to the same separation of powers analysis as the Sentencing Commission or Amtrak.

## 2. The Importance of Congressional Control

Relevant to this separation of powers inquiry are *Nixon v. Administrator of General Services* and *Mistretta v. United States*. In *Nixon*, the Court examined whether the Presidential Recordings and Materials Preservation Act violated, *inter alia*, the constitutional separation of powers.<sup>146</sup> The Act “direct[ed] the Administrator of General Services, an official of the Executive Branch, to take custody of the Presidential papers and tape recordings of . . . former President Richard M. Nixon and promulgate regulations” regarding the archiving and eventual public disclosure of the materials.<sup>147</sup> Nixon argued the Act unconstitutionally infringed upon the powers of the President as head of the executive branch by delegating power to a lower executive official from Congress rather than from the President.<sup>148</sup> Rejecting Nixon’s argument, the Court noted that “[t]he Executive Branch became a party to the Act’s regulation when President Ford signed the Act into law” and emphasized the control the President enjoyed over the Administrator of General Services by virtue of appointing that official.<sup>149</sup> The Court further affirmed the fundamental constitutionality of inter-branch power sharing, holding that the three branches of the federal government are not completely separated and that “the proper inquiry” for determining whether a law “disrupts the proper balance between the coordinate branches . . . focuses on the extent to which it prevents [one branch] from accomplishing its constitutionally assigned functions.”<sup>150</sup> When a branch’s constitutional function is so prevented, the Court then considers “whether that impact is justified by an overriding need to promote objectives within the constitutional authority of” the interfering branch.<sup>151</sup> Applying this standard, the Court found the Act did not intrude on the executive’s powers because it gave responsibility for the presidential records to an official of the executive branch and gave the legislative branch no

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<sup>144</sup> See *supra* note 137.

<sup>145</sup> See *supra* note 39 and accompanying text.

<sup>146</sup> 433 U.S. 425, 429 (1977).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 439–40.

<sup>149</sup> *Id.* at 441.

<sup>150</sup> *Id.* at 443 (citing *United States v. Nixon*, 418 U.S. 683, 711–12 (1974)).

<sup>151</sup> *Id.* (citing *Nixon*, 418 U.S. at 711–12).

special access to the records;<sup>152</sup> in fact, the Court concluded “[t]he Executive Branch remains in full control of the Presidential materials . . . .”<sup>153</sup>

### 3. *Mistretta* Revisited

In *Mistretta*, as noted above, the Court evaluated the constitutionality of the Sentencing Commission, finding that Congress had not improperly delegated legislative power to the independent body.<sup>154</sup> In addition to the plaintiff’s non-delegation argument, the Court considered whether the establishment of the Sentencing Commission violated the constitutional separation of powers.<sup>155</sup> *Mistretta* argued that, in establishing the Sentencing Commission as a body within the judicial branch tasked with creating federal sentencing policy, Congress “unconstitutionally . . . required the [Judicial] Branch . . . to exercise . . . legislative authority . . . .”<sup>156</sup> *Mistretta* also contended that the placement of federal judges on the Sentencing Commission, the placement of non-judges on the Commission alongside judges, and the appointment of members of the Commission by the President “unconstitutionally eroded the integrity and independence of the Judiciary . . . .”<sup>157</sup>

Most importantly, the Supreme Court clearly articulated that the “peculiar” nature of the Sentencing Commission, as a nonjudicial body within the judicial branch, did not by itself violate the Constitution’s separation of powers.<sup>158</sup> The Court further held that the Sentencing Commission’s powers were “not united with the powers of the Judiciary” in a constitutionally meaningful way because the Commission was not a court, its powers were not judicial in nature, and it was accountable to Congress rather than to the judiciary.<sup>159</sup> Thus, the Sentencing Commission did not give the judicial branch powers outside its proper constitutional scope.<sup>160</sup> Similarly, the Court held Congress had not “aggrandized the authority of [the Judicial] Branch or . . . deprived the Executive Branch of a power it once possessed” by placing the Sentencing Commission within the judicial branch, nor had it diminished its own authority (because the Commission was not granted any authority possessed by Congress).<sup>161</sup> The Court concluded that the Sentencing Commission also did not prevent the Judicial Branch from carrying out its constitutional functions.<sup>162</sup> Finally,

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<sup>152</sup> *Id.* at 443–44.

<sup>153</sup> *Id.* at 444.

<sup>154</sup> 488 U.S. 361, 412 (1989).

<sup>155</sup> *Id.* at 380.

<sup>156</sup> *Id.* at 383.

<sup>157</sup> *Id.* at 384.

<sup>158</sup> *Id.* at 385 (“Our constitutional principles of separated powers are not violated, however, by mere anomaly or innovation.”).

<sup>159</sup> *Id.* at 393.

<sup>160</sup> *See id.*

<sup>161</sup> *Id.* at 395.

<sup>162</sup> *Id.* at 395–96 (quoting *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 443 (1977)).

the Court concluded the President’s ability to remove members of the Commission for cause gave the executive adequate oversight over the independent body without allowing it to “exercis[e] ‘coercive influence.’”<sup>163</sup>

As *Nixon* makes clear, a U.S. Climate Assembly, as an independent body charged with developing policy recommendations for Congress and the executive, would not on its face violate the constitutional separation of powers.<sup>164</sup> As an advisory body tasked merely with suggesting policy rather than creating it, the Assembly would not prevent any branch of government from carrying out its constitutional function—on the contrary, it would assist the legislative and executive branches by producing policy recommendations, conducting fact-finding, and providing a forum for public debate and input. (The Assembly would likely have no meaningful relationship with the judiciary.) Just as the function of the Administrator of General Services was found not to interfere with the executive branch because the executive retained control over the disposition of presidential records in *Nixon*,<sup>165</sup> so, too, would a U.S. Climate Assembly be likely to be found not to interfere with either the federal executive or the legislature because those bodies would themselves ultimately retain control over the adoption of the Assembly’s recommendations.

Under the *Nixon* and *Mistretta* analyses, a U.S. Climate Assembly’s constitutionality might depend on its location within the federal government. If Congress were to establish the Assembly under the legislative branch, then Congress would likely be expected to retain some authority over the Assembly, such as in approving its composition (the equivalent, here, of controlling appointments because Assembly participants would be chosen randomly rather than selected directly by Congress or another authorized party).<sup>166</sup> Doing so would align with the Supreme Court’s ruling in *Nixon* that the exercise of control by the “proper” branch (i.e., the branch with whose constitutional duties the disputed body’s functions conform) is necessary for a constitutional delegation of power, strengthening the Assembly’s constitutional footing.<sup>167</sup> Similarly, in light of the Supreme Court’s ruling in *Mistretta* that a governmental body cannot constitutionally aggrandize power to a branch that does not already possess such power,<sup>168</sup> a U.S. Climate Assembly situated within the legislative branch would create the least constitutional offense because Congress is the natural policymaking organ of the federal government—thus, even if the Assembly was determined to be a policymaking body, its location within the legislative branch would prevent it from taking any policymaking authority away from Congress and transferring it to another branch.

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<sup>163</sup> *Id.* at 411.

<sup>164</sup> *See supra* notes 150–53 and accompanying text.

<sup>165</sup> *Nixon*, 433 U.S. at 444.

<sup>166</sup> *See id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Mistretta v. United States*, 488 U.S. 361, 395 (1989).

Even if Congress were to place the Assembly under the executive branch, it is unlikely such an arrangement would disrupt the separation of powers in an unconstitutional manner. As noted above, the Assembly would not possess actual policymaking ability, so its existence as an executive organ would not diminish Congress's legislative power.<sup>169</sup> Alternatively, to avoid any potential constitutional conflict over the Assembly's alleged policymaking power, Congress could restrict the scope of the Assembly's authority to merely recommending executive policy as carried out by executive agencies under Congressional authorization. Once again, though, the non-policymaking nature of a U.S. Climate Assembly should prevent these constitutional issues from arising.

### *C. Creating a U.S. Climate Assembly Under the EPA*

Rather than creating a U.S. Climate Assembly under the legislative branch of the federal government, Congress could instead establish the Assembly under the executive branch. As discussed above, this may raise a slightly stronger constitutional challenge, but the Assembly's limited scope and authority would most likely ensure its constitutionality. Furthermore, establishing a U.S. Climate Assembly under the executive branch could potentially contribute to a novel use of citizens' assemblies in the United States different from their use in other countries thus far. Specifically, a U.S. Climate Assembly created by Congress but located in the executive branch under the Environmental Protection Agency could help establish a new model of informal rulemaking within the U.S. administrative state.

As the executive agency tasked with protecting the environment,<sup>170</sup> the EPA plays an important role in ensuring the United States meets its carbon emission reduction commitments under the Paris Climate Agreement and other agreements. If Congress were to establish a U.S. Climate Assembly under the executive branch, placing the Assembly under the authority of the EPA would make the most sense. The Assembly could, and probably would, still craft policy recommendations for Congressional legislation or executive action by other agencies, such as the Department of the Interior, the Department of Energy, or the Department of Transportation, but the EPA would likely be best placed to implement the Assembly's recommendations.

As an executive agency of the federal government, one way in which the EPA drafts and promulgates regulations is through a process known as informal rulemaking (or notice-and-comment rulemaking).<sup>171</sup> Under the Administrative Procedure Act, an agency must publish "[g]eneral notice of proposed rule making . . . in the

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<sup>169</sup> See *supra* note 39 and accompanying text.

<sup>170</sup> *Our Mission and What We Do*, U.S. EPA, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> [<https://perma.cc/GB5D-KTKE>] (last visited Apr. 30, 2024).

<sup>171</sup> See Emily S. Bremer, *A Primer on the Informal Rulemaking Process*, ADMIN. CONF. OF THE U.S. (May 10, 2013), <https://www.acus.gov/newsroom/administrative-fix-blog/primer-informal-rulemaking-process> [<https://perma.cc/NR3D-3ZXP>].

Federal Register” and provide an opportunity for “interested persons . . . to participate in the rule making” in various ways.<sup>172</sup> The Supreme Court has held these provisions to establish minimum requirements for federal agencies, allowing agencies to expand upon them and employ a more involved process when creating regulations if they so desire.<sup>173</sup> Given this broad discretion enjoyed by agencies, it seems likely that a citizens’ assembly would be a permissible form of informal rulemaking because it incorporates public comment directly, with participants drafting recommendations independent of government officials. This unique structure, however, while offering an innovative approach, may also encounter some legal difficulties.

One of the purposes of informal rulemaking is to allow parties with a stake in the agency’s regulatory policies to appropriately influence government policy. Thus, federal courts have held that industries “palpabl[y]” affected by regulations must be allowed to examine and comment on those regulations.<sup>174</sup> This requirement could be difficult for a U.S. Climate Assembly to meet because participants must be selected randomly and experts are meant to be impartial.<sup>175</sup> Industry representatives could thus not deliberately be chosen as participants, nor could they serve as experts.<sup>176</sup> The government could perhaps include industry-approved experts, but this would taint the impartiality of the Assembly.<sup>177</sup> However, since a citizens’ assembly is meant to represent the entire national public in miniature, proper weighting for participants’ industry of employment could perhaps provide such industry representation. If these arrangements would still be insufficient, then industry representatives could make their own presentations to the Assembly, following the example of the Washington Climate Assembly,<sup>178</sup> thus providing them a means to participate in the process of drafting policy recommendations while limiting their involvement so as not to unduly influence or distort the purpose of the Assembly.

Another potential challenge for a U.S. Climate Assembly convened to satisfy the requirements of informal rulemaking is the role of the Assembly as rule maker itself. Rather than merely evaluating and ratifying or rejecting a proposed government program—as happened in the unsuccessful U.K. Climate Assembly<sup>179</sup>—an effective U.S. Climate Assembly would allow the participants themselves to craft policy recommendations. While the federal government would set the objectives and

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<sup>172</sup> 5 U.S.C. § 553(b)–(c).

<sup>173</sup> See *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.* 435 U.S. 519, 524 (1978) (first citing *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742 (1972); and then citing *United States v. Fla. E. Coast Ry. Co.*, 410 U.S. 224, 240 (1973)).

<sup>174</sup> *Nat’l Helium Corp. v. Fed. Energy Admin.*, 569 F.2d 1137, 1146 (Temp. Emer. Ct. App. 1977) (quoting *Nat’l Motor Freight Traffic Ass’n v. United States*, 268 F. Supp. 90, 96 (D.D.C. 1967) (three judge court), *aff’d per curiam*, 393 U.S. 18, 89 (1968)).

<sup>175</sup> See *supra* notes 137–38 and accompanying text.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> See *supra* note 75 and accompanying text.

<sup>179</sup> Wells, *supra* note 13, at 124.

scope of the Assembly's work, the Assembly, not the EPA, would be producing the rules. This dual function of proposing and commenting on policy recommendations could be too broad to be considered proper informal rulemaking.

### III. A HYPOTHETICAL U.S. CLIMATE ASSEMBLY

What might a hypothetical U.S. Climate Assembly look like? First, Congress would have to include the Assembly's mandate, along with a clear plan for the incorporation of its recommendations into the legislative process, in the legislation creating the body.<sup>180</sup> Without such a mandate and plan, the Assembly would be less likely to influence government policymaking, and thus less effective.<sup>181</sup> Congress could task the Assembly with addressing a broad, open-ended question, similar to the mandates of the Spanish and Washingtonian Climate Assemblies,<sup>182</sup> or Congress could give the Assembly a more specific objective, such as that of the French Climate Assembly, which was tasked with suggesting policies that would help France reduce its greenhouse emissions by at least 40% from 1990 levels by 2030 while also promoting social justice.<sup>183</sup>

After establishing the Assembly's basic goal, the demographic makeup of the Assembly would have to be determined, including how the participants would be selected. Of course, Congress would not need to provide the exact methodology to apply—it would be more practical to outsource such minutiae to a non-governmental organization specializing in such operations, as the organizers of the Washington Climate Assembly did.<sup>184</sup> Congress would still probably want to provide for the creation of an Assembly meeting the basic requirements of a citizens' assembly.<sup>185</sup> A larger group—100 or more participants—would probably be preferable because it would more easily represent minority groups proportionately and be less likely to fall below the minimum threshold should participants drop out. The main downside of assembling a larger group would be the increased cost. Whether Congress or an outside organization were to craft the Assembly's demographic makeup, a crucial decision to be made would be which demographic groups to account for. Two issues

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<sup>180</sup> See *supra* Section II.A.

<sup>181</sup> See Sophie Dicker, *Where Next for the UK Climate Assembly?*, LONDON SCH. ECON. & POL. SCI. (Sept. 30, 2020), <https://www.lse.ac.uk/granthaminstitute/news/where-next-for-the-uk-climate-assembly/> [<https://perma.cc/7TCS-L7R5>] (explaining that the UK Climate Assembly's lack of a "mandate from, or direct link to, government" hampered its effectiveness).

<sup>182</sup> See *supra* notes 42, 64.

<sup>183</sup> See *Les propositions de la Convention Citoyenne pour le Climat* [*The Proposals of the Citizens' Convention for Climate*], CONVENTION CITOYENNE POUR LE CLIMAT 8 (2021), <https://www.lecese.fr/sites/default/files/pdf/Convention/ccc-rapport-final.pdf> [<https://perma.cc/C48N-XHVX>].

<sup>184</sup> See *supra* note 63.

<sup>185</sup> See *supra* note 39.

in particular would greatly affect the Assembly's composition: political opinion and geographic distribution.

Obviously, the Assembly should represent the geographic diversity of the United States. However, if the Assembly were to be truly representative, then not every state would be represented equally. In fact, some states might not even be represented at all. For example, Wyoming, the least populous state in the union, accounts for less than one percent of the entire American population.<sup>186</sup> Although Wyoming enjoys the representation of two Senators and one Representative in Congress, in a U.S. Climate Assembly—an even more representative body than either house of Congress—the Equality State might not even warrant a single representative. In the political context of the United States, where the ideological struggle between conservatives, liberals, and socialists is often reduced to a binary fight between “coastal elites” in populous cities and “real Americans” living in the nation's heartland,<sup>187</sup> leaving entire political units unrepresented in a Climate Assembly could fatally damage the body's legitimacy and inject a partisan character into its operations—completely undermining the Assembly's non-partisan, consensus-building function. To ensure the Assembly's success, then, pure democratic representation may have to be sacrificed in the name of pragmatism, and every state may have to be guaranteed a voice in the Assembly.

The other major question the designers of a hypothetical U.S. Climate Assembly must tackle is whether to account for the participants' political views when creating a representative “mini-United States.” Although political opinion, unlike geography, is not always a consideration for planners crafting climate assemblies, there may be compelling reasons to include it. First, the experience of the Washington Climate Assembly shows that a climate assembly can deliberately account for partisan affiliation and include participants skeptical of climate change and its effects and still produce meaningful recommendations approved by the vast majority of participants.<sup>188</sup> Given this experience, and the fact that climate assemblies generally tend to produce recommendations beyond what was thought politically popular before,<sup>189</sup> it appears that participation in climate assemblies could itself persuade climate skeptics (or even climate deniers) of the reality and severity of climate change. This alone would provide a strong argument in favor of the explicit inclusion of climate skeptics in a U.S. Climate Assembly.

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<sup>186</sup> See *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/WY> [<https://perma.cc/9ULW-T9S7>] (last visited Apr. 30, 2024) (showing the population of Wyoming to be 576,851 as of the 2020 census); *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045221> [<https://perma.cc/PL3J-CBJ2>] (last visited Apr. 30, 2024) (showing the population of the United States to be 331,449,281 as of the 2020 census).

<sup>187</sup> See David Masciotra, “Real Americans” vs. “Coastal Elites”; *What Right-Wing Sneers at City-Dwellers Really Mean*, SALON (Nov. 20, 2016), <https://www.salon.com/2016/11/20/real-americans-vs-coastal-elites-what-right-wing-sneers-at-city-dwellers-really-mean/> [<https://perma.cc/JTB7-D2JN>].

<sup>188</sup> See *supra* note 63.

<sup>189</sup> See Wells, *supra* note 13, at 121.

Beyond the persuasive benefit of including climate skeptics in a U.S. Climate Assembly, doing so might also provide political benefits. Just as the Assembly's designers would have to consider the political ramifications of excluding Wyomingites, so, too, would they have to acknowledge the potential political effects of including climate skeptics and participants of different ideological persuasions. By explicitly including such participants, the Assembly would strengthen its political legitimacy among those groups and other groups opposed to climate action. However, there is also a strong case to be made that the Assembly could open itself up to accusations of pushing a partisan agenda if it contained a representative number of Republicans, Democrats, and voters not affiliated with either major party. Not only would this result in more Democrats being in the Assembly than Republicans,<sup>190</sup> but it could lead to the media scrutinizing the partisan breakdown of the Assembly's votes, which would taint the Assembly's non-partisan character. Alternatively, the Assembly's crafters could account for political ideology rather than party identification, which would obscure the Assembly's partisan divides and perhaps produce a more legitimate result because conservatives would likely outnumber liberals.<sup>191</sup> Finally, because climate policy and climate science are such divisive partisan issues in the United States,<sup>192</sup> including political views and climate skepticism in the demographic composition of the Assembly would more accurately reflect the challenges of current the U.S. climate debate and perhaps forge a more robust popular consensus.

After establishing the mandate and composition of a U.S. Climate Assembly (and possibly working out the details of the Assembly's operational structure), Congress would have to decide how the Assembly would present its recommendations. Ideally, the recommendations could be presented directly to Congress for an up-or-down vote. However, a more realistic process might involve the Assembly presenting its recommendations to Congress and letting the legislature draft and pass legislation accordingly. This would be similar to the process the French and Spanish Climate Assemblies pursued.<sup>193</sup> However, there would be a major risk that the legislature would water down the proposals and not implement the recommendations as originally envisioned by the Assembly. This, of course, is exactly what happened after the French Assembly presented its recommendations to the National Assembly and Senate.<sup>194</sup>

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<sup>190</sup> See *Party Affiliation*, GALLUP, <https://news.gallup.com/poll/15370/party-affiliation.aspx> [<https://perma.cc/4A4P-HR9F>] (last visited Apr. 30, 2024) (showing that 30% of Americans identify as Democrats while 28% identify as Republicans).

<sup>191</sup> See Lydia Saad, *U.S. Political Ideology Steady; Conservatives, Moderates Tie*, GALLUP (Jan. 17, 2022), <https://news.gallup.com/poll/388988/political-ideology-steady-conservatives-moderates-tie.aspx> [<https://perma.cc/N83B-47SN>] (showing that 30% of Americans identify as conservative and 25% as liberal as of 2022).

<sup>192</sup> See *supra* notes 22–24 and accompanying text.

<sup>193</sup> See *supra* notes 47, 48 and accompanying text; *supra* note 51.

<sup>194</sup> See *supra* note 51 and accompanying text.



## CONCLUSION

A U.S. Climate Assembly holds immense potential. At a minimum, the convention of a climate assembly could embolden more private actors to pressure the government to take serious climate action, as happened in France, where former members of the French Climate Assembly, disappointed with the government's response to the Assembly's recommendations, founded an advocacy group to push for climate action in line with those recommendations.<sup>195</sup> At a maximum, the creation of a U.S. Climate Assembly could help establish a new political paradigm where citizens' assemblies are convened more often, each designed to address a different pressing national issue. This political dynamic has manifested in Ireland following the success of the Irish Citizens' Assembly in 2016, with the government convening subsequent citizens' assemblies on the issues of national population aging, parliamentary terms, referendum procedures, climate policy, and gender equality.<sup>196</sup>

As the Irish experience proves, the application of citizens' assemblies can go far beyond climate issues. The success of the 2016 Irish Citizens' Assembly on abortion particularly shows the possibilities of citizens' assemblies in tackling other divisive issues on which a political consensus is sorely needed.<sup>197</sup> In the United States today, it seems that almost every major political issue fits this description, from gun control to abortion.<sup>198</sup> Given the demonstrated support for citizens' assemblies in the United States,<sup>199</sup> applying them broadly hardly seems a far-fetched idea. The first step toward normalizing (and possibly even institutionalizing) citizens' assemblies, however, is to convene one at the national level. Climate policy offers a particularly attractive opportunity for a first citizens' assembly because climate change affects a wide variety of Americans. While only 32% of Americans own guns,<sup>200</sup> far more Americans have a personal stake in the effects of climate change—droughts, wildfires, floods, hurricanes, etc. Furthermore, climate change is unique in its pervasive nature, affecting all aspects of life, from food sources to immigration flows and from

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<sup>195</sup> See Chloé Farand, *French Draft Climate Law Criticized for Weakening Ambition of Citizens' Assembly*, CLIMATE HOME NEWS (Dec. 1, 2021), <https://www.climatechangenews.com/2021/01/12/french-draft-climate-law-criticised-weakening-ambition-citizens-assembly/> [<https://perma.cc/YR2C-GQFC>].

<sup>196</sup> *Irish Citizens' Assembly Wants to Protect Biodiversity*, BÜRGERRAT (Apr. 5, 2023), <https://www.buergerrat.de/en/news/irish-citizens-assembly-wants-to-protect-biodiversity/> [<https://perma.cc/LXY5-TMS5>].

<sup>197</sup> See *supra* note 50 and accompanying text.

<sup>198</sup> See, e.g., *Top 8 Reasons for a U.S. National Citizens' Assembly on Gun Violence*, BUILDING A NEW REALITY, <https://banr.foundation/series/top-8-reasons-for-a-u-s-national-citizens-assembly-on-gun-violence/> [<https://perma.cc/LLP2-4MER>] (last visited Apr. 30, 2024).

<sup>199</sup> See *supra* note 85.

<sup>200</sup> Lydia Saad, *What Percentage of Americans Own Guns?*, GALLUP (Nov. 13, 2020), <https://news.gallup.com/poll/264932/percentage-americans-own-guns.aspx> [<https://perma.cc/RU9U-9FBT>].

economic growth to the housing market. Presenting climate issues to 100 randomly selected Americans representing the demographic diversity of the entire nation would create and advance a coherent narrative of climate policy in American politics. Such a narrative, which would arise out of the recommendations produced by a U.S. climate assembly, could inform all aspects of government policy, from federal energy subsidies to municipal zoning ordinances. Even if the Assembly were to fail in the short term, how could such an experiment fail to change American politics in the long term? The exigencies of climate change demand urgent action today. The potential of a U.S. Climate Assembly invites action many years into the future.