TULANE INSTITUTE
ON WATER RESOURCES LAW & POLICY

LESSENING UNCERTAINTY: PATHWAYS FOR STATE AND LOCAL GOVERNMENTS TO IMPROVE WATER MANAGEMENT IN THE MISSISSIPPI RIVER CORRIDOR

A White Paper by the Tulane Institute on Water Resources Law & Policy[1]

OVERVIEW

Although water is an essential resource, legal regimes for its management and protection do not fully reflect its importance. Water resource challenges, of both quality and quantity, are growing across the country due to ineffective management practices, particularly in the absence of comprehensive federal oversight. Federal statutes like the Clean Water Act provide a baseline for water quality protection, but states retain the authority to manage and regulate water resources within their borders. However, the federal government is undergoing drastic changes in terms of executive policy and funding under the new presidential administration, calling into question fundamental environmental programs and potentially upending a longstanding balance of established federal, state, and local management and funding structures. Thus, environmental protection and water management efforts will become even more important at the state and local levels. This paper explores state and local water governance approaches, focusing primarily on the Mississippi River Corridor (Minnesota, Wisconsin, Iowa, Illinois, Missouri, Kentucky, Tennessee, Arkansas, Mississippi, and Louisiana). It examines opportunities for states and local governments to improve water management through laws and regulations, funding, and policy implementation. As the Mississippi River Corridor experiences increasing climate related issues, state and local entities can utilize various tools to prioritize water resource management and policy planning. Incorporating examples from several states and cities within the Mississippi River Corridor and similarly situated regions, this paper highlights the growing need for proactive state and local action to address current and future water-related challenges.

1) GROWING NEED FOR STRENGTHENED STATE & LOCAL INTERVENTION

The balance between states and the federal government has shifted profoundly over the past several years. Several landmark U.S. Supreme Court cases and executive decisions have brought and continue to bring sweeping changes to environmental law and the scope of federal agencies' authority, especially the Environmental Protection Agency ("EPA"). In 2022, the Supreme Court decided *West Virginia v. EPA*, holding that the EPA lacked authority to require electricity generation shifting from coal to cleaner energy sources, limiting the agency's ability to combat greenhouse gas emissions.[2] In this decision, the Court invoked the "major questions doctrine," which stands for the view that agencies cannot make decisions on matters that have "vast economic and political significance" without clear Congressional authorization.[3] Then, in the summer of 2023, the Supreme Court decided *Sackett v. EPA*, which dramatically limited Clean Water Act ("CWA") protections for wetlands and streams across the country.[4] Most recently, in early March 2025, the Supreme Court decided *San Francisco v. EPA*, which will have widespread impacts on municipal water management.[5] The Court held that the EPA lacked authority to impose "end result" requirements in the CWA's National Pollutant Discharge Elimination System permits, which required permittees to ensure point source discharges did not violate state water quality standards in receiving waters through individual implementation plans.[6] The EPA may now only impose specific discharge limits on permits, even where those are insufficient to maintain federal and state water quality standards.[7] This could present challenges in localities with combined stormwater and wastewater plants that experience sewage overflow from heavy rainfall events.[8]

Other cases not directly involving the EPA have further weakened federal authority. In June of 2024, the Supreme Court overturned a longstanding administrative law doctrine, known as the *Chevron* doctrine, which instructed federal courts to defer to an agency's reasonable interpretation of vague or ambiguous statutory provisions in a law it implements.[9] This could upend a vast realm of administrative regimes that have relied on deference to maintain a level of consistency and certainty, particularly for public health and environmental law. Congress typically has

not drafted statutes with the level of detail and precision that is now required for successful implementation. Just months later, the overturning of *Chevron* has already been put forth in arguments for over 100 cases.[10] Furthermore, last year's Supreme Court decision in *Corner Post, Inc. v. Board of Governors*, held that the statute of limitations for judicial review of agency rulemaking runs from the date of injury rather than the date a rule is issued, essentially removing finality for agency regulations.[11]

Most of these landmark decisions came down before President Trump returned to office. Since then, there has been even greater uncertainty surrounding the future of environmental protection and related public programs. Shortly after inauguration, the Trump administration ordered a freeze on federal funding from the Inflation Reduction Act ("IRA") and the Infrastructure Investment and Jobs Act ("IIJA").[12] These laws marked a historic investment across a wide range of public programs, including clean water initiatives, flood risk reduction, renewable energy policy, and environmental justice.[13] With climate funds at risk, amid ongoing mass layoffs at the EPA and other agencies, planned projects and programs at the state level could be in jeopardy, even for projects already underway.[14] Meanwhile, the EPA has also requested the White House remove its endangerment finding with respect to greenhouse gases, the basis for the agency's policies addressing climate change.[15] It also is considering rewriting CWA rules to further limit protections for streams and wetlands.[16]

Federal water policy initiatives have not received much traction even as the need for watershed management becomes more apparent.[17] There are federally funded programs that deal with water conservation and water quality across various federal entities.[18] Still, there is no central law that covers water allocation and supply, so state and local water resource management practices vary widely.[19] Since environmental law has been the primary vehicle for federal authority impacting water resources, state and local governments will see their roles change on various matters, from consumer protection to public health to natural resource management. Even with the confusion surrounding environmental programs and funding under this presidential administration, there are opportunities for

states and localities to improve water resource management and climate adaptation.[20] To better understand the landscape and opportunities outside federal frameworks, this report explores various pathways for state and local governments to lessen uncertainty around water management, with recent examples of successful policies. The applicability of some measures to states and localities the Mississippi River Corridor will vary due to nuances in state law and differing local authority frameworks.

2) OPPORTUNITIES FOR STATES

Most environmental regulatory regimes employ a cooperative federalism framework where federal law sets minimum standards, which states can administer if they maintain compliance with federal law. States may implement regulations and policies that go beyond the federal floor, unless existing state law prohibits the adoption of more stringent standards.[21] Recent Supreme Court decisions fundamentally limited the federal role in public health and environmental protection. Because water does not follow political boundaries, state-by-state approaches are largely ineffective where interstate coordination is needed. A patchwork approach will create more water management challenges that will have to be addressed by individual state and local governments. Of course, there are existing frameworks in which states and localities can collaborate to address common issues impacting the Mississippi River. Each state has responsibilities under the Mississippi River / Gulf of America Hypoxia Task Force, co-chaired by the EPA, to implement policies addressing reducing nutrient loading in the Mississippi River, which ultimately forms a dead zone when it empties into the Gulf of Mexico (currently referred to as Gulf of America pursuant to a President Trump Executive Order).[22] However, this disjointed policy approach, which relies on voluntary measures, has proven to be largely inadequate in addressing persistent nutrient pollution.[23] More must be done at the state level to regulate water quality and create pathways for states to align better practices.

a) Water Quality

In 2023, the U.S. Supreme Court significantly changed the scope of the federal Clean Water Act in *Sackett v. EPA*.[24] The Court held that

only year-round flowing streams and wetlands with a continuous surface connection to traditionally navigable bodies of water are subject to federal protection, severely limiting which streams and wetlands are protected under the Clean Water Act.[29] This marked a significant change following over forty-five years of consistent interpretation and administration of the law.[30] Estimates over the percentage of wetlands and streams that lost protection vary widely; however, the lower end estimates would still have massive implications on local water quality and floodplain management.[31] Such a significant rollback of federal jurisdiction leaves many floodplain wetlands and isolated wetlands without protections, which can have broader impacts on ecological functions, flooding, and drainage capacity in local communities. Using the Mississippi River to illustrate the potential impacts from the majority's ruling, Justice Kavanaugh noted in a concurring opinion that "[u]nder the Court's 'continuous surface connection' test, the presence of those levees . . . . would seemingly preclude Clean Water Act coverage of adjacent wetlands on the other side of the levees, even though the adjacent wetlands are often an important part of the flood-control project."[32]

LEGISLATIVE SPOTLIGHT
Wisconsin Pre-Disaster Grants

In April 2024, Governor Evers signed Wisconsin S.B. 222, providing a pre-disaster flood resilience grant program for local governments.[25] This bipartisan measure offers two kinds of grants: one that assesses localized flood risk, and the other to fund projects that reduce flood damage.[26] It indirectly supports wetlands protection due to their role in flood protection. It specifies that these grants and projects are intended for areas that received a federal disaster designation due to flood damage within the last decade.[27] These grants cover seventy-five percent of local project costs.[28] While more robust protections are needed to limit development in wetland areas, this law can help incentivize local governments to address flood risk better and improve infrastructure.

State legislatures in the Mississippi River Corridor could take action to maintain and expand wetland protections to address both water quality and flood control issues. Along the main stem, Minnesota and Wisconsin have wetland protections that help fill the gaps left by the retreat of CWA jurisdiction.[33] Illinois has a few additional protections for wetlands impacted by certain state-funded projects.[34] Tennessee imposes some additional state requirements on wetland and stream alterations.[35] However, Iowa, Missouri,

Kentucky, Mississippi, and Louisiana all tie their state-CWA programs to WOTUS.[36]

LEGISLATIVE SPOTLIGHT
Colorado Wetlands Law

Colorado has many seasonal and subsurface connected streams that were impacted by the ***Sackett*** decision. Last year, the state legislature passed Colorado HB 1379, which reinstated protections for ephemeral streams and wetlands by arguing that they play a "crucial role in maintaining water quality for drinking water and wildlife habitats, recharging groundwater, controlling floods, and keeping pollution from entering larger bodies of water."[37] It also created a regulatory program for all dredge and fill activities that could impact state waters.[38] Exemptions from a companion Senate bill regarding concerns of farmers, developers, miners, and some cities were ultimately added to HB 1379, which led to its success.[39] It is said to be the "strongest protection" for these wetlands and waters in the last fifty years.[40]

So far, some states have taken action to directly address or mitigate changes from the *Sackett* decision. Earlier this year, Illinois lawmakers introduced a bill to regulate wetlands that lost Clean Water Act protection after *Sackett*, but the measure failed largely due to opposition from agricultural interests.[41] Conversely, Tennessee attempted to further limit wetlands and stream protection, but that legislation did not pass.[42] Additionally, Kentucky legislators introduced a bill in early 2025 that would limit groundwater, wetlands, and stream protections to reduce the "burden" of environmental regulations on industry.[43] The view that the CWA is merely burdensome to business and industry, rather than a fundamental tool to protect public health, is a mischaracterization of the law and the history behind its passage.[44]

Unless otherwise restricted by their law, states may go above and beyond federal minimum standards under the Clean Water Act. While much of the focus has been on wetland protections, states could utilize other aspects of water quality regulations to lessen uncertainty around water management. A recent effort in Minnesota, though ultimately unsuccessful, demonstrates an approach that could improve water quality and health outcomes. In November 2023, the EPA urged the state legislature to take action on nitrate pollution.[45] Much of this is attributable to fertilizer runoff, which leads to nitrate pollution in surface waters, then seeping into underground aquifers.[46] Fertilizer nitrates are a major contributor to groundwater

contamination in Minnesota.[47] The measure would have required the Minnesota Department of Agriculture to charge "per ton" fees on nitrogen fertilizers sold or distributed in Minnesota, with money from the tax going to support communities facing water pollution from nitrates.[48] The bill faced vigorous opposition from the state and local Farm Bureau chapters.[49] Even though this bill did not pass, there are other efforts outside of the Mississippi River Corridor, like Colorado's response to *Sackett*, which serve as an example of what a state can accomplish, despite political challenges, to maintain and improve the protection of wetlands and water bodies at the state level.

b) Water Use

Unlike water quality regulation, water quantity is and has always been primarily a state matter. States retain authority over water supply and allocation within their borders, as there generally is no federal standard to comply with, in the absence of instream flow requirements under the federal Endangered Species Protections Act or a related law.[50] However, that does not mean states monitor or regulate these matters independently. Knowing the amount of water being used, the parties using it, the purpose of use, and the water source is essential when managing and making decisions regarding the water resources of a state. However, this information is only available if a state has chosen to require data collection and reporting. States that do not require comprehensive monitoring and data collection should consider measures to implement such programs. Federal agencies like the U.S. Geological Survey, which study and monitor groundwater and surface water, have access to data from its network of gauges across the country.[51] However, it does not fully capture state-specific or sector-specific water use trends.[52] The lack of information hinders data-driven decision-making in times of water shortages, especially when states vary in water reporting and legal mechanisms to restrict water use. Moreover, a lack of coordination between states can lead to approvals of new industrial projects that rely on steady, plentiful water supply without a full analysis of watershed impacts and future conditions impacting water availability.

In the Mississippi River Corridor, many states based their water resource management frameworks on regulated riparianism. Six of

the Mississippi River's main stem states implement statewide regulatory permitting regimes for water use, and the remaining have varying degrees of regulation and monitoring requirements.[53] However, not all states that regulate water use manage surface and groundwater conjunctively, which is critical to the sustainable management of these resources. States have a broad scope of authorities, stemming from the inherent authority of state governments to protect the health, safety, and welfare of their citizens, referred to collectively as police powers.[54] These are exercised in numerous ways, from abatement of public nuisances to the protection of drinking water sources.[55] Most states allow local governments to exercise police powers, which can be utilized to implement a more robust framework for water management and protection, especially during times of flood and drought. One pathway would be to bring more water-dependent activities under its oversight. For example, in many states, water used in mining operations is not regulated under state water law regimes.[56]

STATE SPOTLIGHT
Kansas Groundwater Legislation

Kansas House Bill 2279 addresses the conservation of the Ogallala Aquifer, the primary water source for farmers during the current drought in western Kansas.[57] This measure aims to preserve the water left in the aquifer and hold Groundwater Management Districts responsible for conservation initiatives.[58] It requires Kansas's five Groundwater Districts to keep records of their activities, including finances and budgets, conservation efforts, and water use activities.[59] It also requires districts to identify water conservation issues within their region and develop action plans to tackle these problems.[60] The bill didn't face any major challenges or compromises to achieve success. This measure represents a small step that states can take to promote water conservation planning.

Tribal Nations in the Mississippi River Corridor have made efforts to manage water resources more proactively as well. While federally recognized tribes operate under different legal frameworks than state and local governments, they also rely on these shared water resources and can offer insight into how other entities can be better stewards of resources. Recently, a Tribe in Minnesota took steps to increase water management

oversight. The White Earth Band, a federally recognized Tribe, is one of the seven Ojibwe bands in Minnesota that rely on agriculture, specifically wild rice, to support their way of life, which is threatened by pollution challenges and climate change.[61] In 2022, the Tribe declared a two-year moratorium on new dairy and livestock operations to establish a regulatory water program to prevent environmental hazards.[62] The Tribe also enacted an ordinance granting it the authority to approve or deny any new high-capacity water wells, citing that Minnesota's Department of Natural Resources process was not "sufficiently rigorous to protect reservation groundwater from depletion or pollution from increasing numbers of high-capacity wells approved by the state."[63] However, the Tribe's Business Committee paused the ordinance's enforcement after several challenges to the Tribe's authority to administer these water use permits.[64] Despite future uncertainty due to ongoing legal challenges, it demonstrates potential pathways to address ongoing local challenges when the state fails to exercise an adequate level of effort necessary to protect essential resources.

c) Public Works and Planning

Eastern states have typically enjoyed an abundance of freshwater resources that have generally satisfied domestic, agricultural, and industrial demands. Historically, there was no major need to closely monitor and plan for future water supply. Yet climate change and economic changes are contributing to pronounced water stress, including record breaking drought conditions across the lower forty-eight states in 2024.[65] Places like Louisiana, known for its extensive network of rivers, lakes, and wetlands, face surface and groundwater shortages.[66] While companies, investors, and public officials pay close attention to economic trends and projected energy and electricity demands when considering long-term supply chains and power needs, but the same is often not true for water. Water is just as essential, yet in the Eastern United States (including the Mississippi River Corridor), long-term water resource demands typically do not receive the same level of scrutiny for certain industrial developments, like data centers.[67] Energy and electricity needs are certainly important, but water demands should not be overlooked and may indeed warrant the same attention that energy demands receive.

Through their traditional land and water use authorities, states can implement statewide water resource plans and coordinate efforts across agencies and programs. Seven states in the Mississippi River Corridor have an official drought plan—Minnesota, Wisconsin, Illinois, Iowa, Missouri, Kentucky, and Tennessee.[68] However, Arkansas, Mississippi, and Louisiana do not.[69] Iowa's plan includes a Drought Monitor map that is updated weekly, which is helpful for decision-making based on drought conditions.[70] However, a drought plan without an enforcement mechanism will not achieve the degree of certainty necessary to address future water challenges. This will become more important in light of the loss of publicly available climate data from federal agencies.[71]

To address more specific issues, legislators and, in some cases, citizens, can propose statutes or constitutional amendments to be put on the ballot.[72] These can deal with statewide issues or be tailored to a local government issue needing state approval. Nineteen states, including the Mississippi River main stem states of Illinois, Missouri, and Arkansas, allow citizens to start the initiative process directly.[73] A ballot initiative typically needs a certain number of signatures before it can be put to a vote, indicating sufficient political will for a measure to pass.[74]

STATE SPOTLIGHT
Rhode Island Bond Initiative

Rhode Island voted in favor of a statewide bond measure targeting environmental infrastructure. The "Green Bond" measure was one of four total bond questions on the ballot in Rhode Island and made up $53 million of the over $343 million approved bond measures by voters in the state.[75] The bond is said to invest in forests, farming, outdoor recreation, and an array of other "clean, green" initiatives in the state.[76] Nine environmental projects, from coastal resilience to a major project on the Port of Davisville, will mark Rhode Island's commitment to environmental infrastructure and recreation.[77] The bond measure was introduced in the Rhode Island General Assembly as a provision of the state appropriations bill, with a simple majority vote in the House and Senate, putting the legislatively referred bond question before voters.[78] The success of this initiative reaffirms Rhode Island's commitment to investing in a climate-resilient future.

In 2019, for example, Texas voters approved the Flood Infrastructure Fund Amendment, which authorized the Texas Water Development Board to use dedicated funds for drainage, flood mitigation, and flood

protection projects.[79] In Minnesota, voters approved an extension to continue dedicating state lottery revenues to its Environmental and Natural Resources Trust Fund to support conservation efforts, including clean water efforts.[80] This arrangement has existed since 1991, providing over a billion dollars to beneficial projects.[81]

3) OPPORTUNITIES FOR LOCALITIES

Local governments have an indirect but important role to play in water governance and management beyond compliance with federal environmental laws like the Clean Water Act and Safe Drinking Water Act. Localities can use a variety of mechanisms to influence water management policy and fund resilient infrastructure, but the extent of authority depends on the local government's classification and the powers granted under the corresponding state's laws and constitution.[82] With changes from San Francisco v. EPA, there could be more challenges to maintaining local water quality standards. The following discussion explores various approaches that localities can implement to improve water governance.

a) Zoning and Land Use Planning

Zoning is typically a matter reserved for local governments because of the unique and varying needs of localities and the proximity of local officials to address them. Given the challenges of coordinating and integrating land and water management, some local governments are utilizing tools in zoning codes to protect water resources. One approach is the use of "overlay zones." As the name suggests, these zones can overlap existing zoning districts to add additional protection for surface water, wetlands, and potentially aquifers.[83] Local authorities identify and set the boundaries of the overlay zone and develop corresponding land use standards.[84] Using these buffers, local governments can shield water resources from pollution runoff from industry, agriculture, and other human impacts.[85]

With growing challenges related to climate change, especially in urban areas, climate-informed zoning will be an essential municipal tool, but it must be utilized in an equitable manner. Some cities, like Norfolk, are proactively planning for future urban challenges. In 2016, Norfolk released the "Vision 2100" plan to guide future land use

policy to combat the city's stormwater drainage and funding issues, which Norfolk's City Council adopted as part of the city's Comprehensive Plan.[86] It divides the city into four areas, each with zoning regulations based on its level of flood risk from sea level rise.[87] Areas with the highest flood risk level were then discouraged from future development.[88] Similar approaches are being used in cities across the United States, with places like Boston, Charleston, New Orleans, and Washington, D.C., to reduce future development in flood-prone areas.[89]

Zoning measures also support local responsibilities under the National Flood Insurance Program ("NFIP"), the primary flood insurance provider, administered by the Federal Emergency Management Agency ("FEMA").[90] For NFIP policies to be available in a given community, that locality must designate a floodplain manager and adopt and implement minimum land use controls to ensure structures have proper mitigation and rebuilding standards.[91] However, NFIP policies might not be available in certain localities if it does not contain Special Flood Hazard Areas (which refers to areas with a one percent chance of flooding).[92] This presents further issues because FEMA's flood maps are outdated, as evidenced repeatedly by flooding events in uninsured areas—those like the recent tragedy in the Carolinas in the aftermath of Hurricane Helene.[93]

LOCAL SPOTLIGHT
Chicago Greenprint

In 2012, Chicago updated its Green Infrastructure Vision, or Greenprint, which serves as a tool for the Chicago region "to refine a regionally important network of land and water that is critical to protect and restore."[94] It provides a comprehensive methodology for identifying and mapping wetland habitats and creating a green infrastructure network to maintain important ecosystem services, like flood water retention.[95] County governments are encouraged to use the Greenprint to guide their planning efforts, with the goal of balancing development with the protection of green infrastructure. This includes implementing legal protections (like overlay ordinances), conservation design measures, and climate adaptation efforts by identifying spatial priorities for wildlife, ecosystem functions, and biodiversity.[96] Efforts like this can serve as an example to other localities to better address urban resilience, stormwater management, and wetlands buffers, but they must be paired with municipal action to be useful.

Thus, communities in the Mississippi River Corridor without a local NFIP entity should consider establishing one to prepare for future flooding events. With any actions going beyond minimum floodplain management requirements, like the zoning measures discussed above, communities can be eligible for additional premium discounts.[97]

LOCAL SPOTLIGHT
New Orleans Stormwater Code

In 2018, New Orleans updated its Stormwater Code to improve resilience by reducing urban runoff, preserving permeable surfaces, and reducing subsidence. New constructions must identify environmentally critical areas, retain native vegetation, protect downstream properties and receiving waters, prevent erosion and sediment transport, stabilize soils and outlets, protect storm drains, and control pollutants.[98] Each new development must have a drainage area on site that can handle 1.25 inches of stormwater.[99] Any additional stormwater runoff must be filtered onsite, and any in excess water must exit through surface or subsurface drainage.[100] The Department of Safety and Permits reviews individual stormwater and drainage plans before a building permit is issued, and once issued, the site must implement a stormwater pollution prevention plan.[101] After construction, the site must be certified to be in compliance with this plan.[102] Developers can only acquire a Certificate of Occupancy with this certification, which is renewed annually.[103]

b) Public Works

State and local governments, for the most part, have the power to raise revenue for specific environmental and water projects.[104] This can include bond measures or special taxes to pilot programs to bolster community resilience, support the acquisition of ecologically sensitive lands, or implement projects to improve stormwater management.[105]

The Biden-Harris administration dedicated billions in federal funding under the IRA and IIJA to infrastructure projects and climate adaptation, giving state and local governments unprecedented opportunities to implement programs and policies to improve water resource management and make infrastructure improvements.[106] However, all that has come into question under President Trump's recent executive orders and federal funding freezes.[107] EPA Administrator Zeldin announced that over twenty billion in federal climate grants were cancelled.[108] With this situation, which is quickly evolving and could be subject to legal challenges, alongside the massive cuts to staffing and agency funding across the

government, will have ripple effects throughout the public sector.[109]

LOCAL SPOTLIGHT
Clay County, FL Conservation Bond

Florida's population is rapidly growing, putting smaller counties under development pressures and, in turn, potentially increase the threats facing environmentally sensitive areas. Last July, a 5-0 vote by Clay County Commissioners placed a conservation referendum on the general election ballot.[110] In November, Clay County residents voted to approve the Land Conservation Referendum to Protect Water Quality, Wildlife Habitat, Forests, and Farms, which was on the ballot in an attempt to institute these protections.[111] The ballot measure authorized up to forty-five million in bonds that will support acquisition of conservation lands and establish a local conservation program.[112] Purchased lands will "protect water quality in rivers, lakes, creeks, and drinking water sources."[113] The referendum received 73% of the vote, which in an overwhelmingly red county reflects rising bipartisan support of local environmental conservation.[114]

4) BARRIERS TO REFORM

State and local governments seeking to implement measures like those discussed throughout this report will face numerous challenges. The debate on what role governments should play always arises when considering new approaches, but there are other hurdles beyond political considerations. First, implementing these sorts of measures will often require substantial financial resources upfront. Naturally, this is an issue for both state and local governments, but could be even more so with so many cuts to federal programs that directly and indirectly support water protection and hazard mitigation. For example, consider the need for states to step up after the *Sackett v. EPA* decision to maintain consistent wetlands protections. Most state environmental agencies do not have the funding, capacity, or technical expertise to administer these robust regulatory programs and mitigation.[115]

At the local level, one of the main obstacles to implementing new water management policies comes from state preemption of local authority. Preemption occurs when a higher level of government displaces the law of a lower level of government.[116] The extent of state preemption will depend upon the relationship between the state and local government. There are two general frameworks: Dillon's Rule and Home Rule. Under Dillon's Rule, local governments have

no inherent powers and instead derive their authority solely from their states.[117] Other localities operate under Home Rule, which gives local governments more autonomy by allowing some or all localities within a state the ability to pass laws that govern themselves unless expressly forbidden by state law.[118] Home Rule gives localities more flexibility to implement policies and regulations that address the unique needs of that community.[119] The two are not mutually exclusive—some states authorize home rule charters for certain municipalities while others operate with more limited authority.[120] These two frameworks are discussed further in the Institute's state and local authorities white paper.[121] While broad local powers can sometimes lead to inconsistent policy, innovative local measures addressing water management are especially important when states lack robust frameworks.

In recent years, there has been a notable trend of states using preemption to limit local authority across various policy areas.[122] State legislatures have been more aggressive in recent years, seen through the increase in "lobbying efforts by special interests, spatial sorting of political preferences between urban and rural areas, and single party dominance in many state governments."[123] This can be problematic in dynamic and diverse regions such as the Mississippi River Corridor, where local needs and conditions vary widely, and state frameworks are limited. Preemption can impact a wide range of local policy areas, including worker rights, public health, anti-discrimination ordinances, and natural resource protections.[124] While there might be compelling reasons to limit local power in certain areas to promote consistency, states often preempt localities from acting on matters that the state is silent on, which is where real challenges emerge.

State preemption can pose significant challenges to effective water resource management in the Mississippi River Corridor. When a state legislature limits specific local authorities, it hinders the development of innovative water management strategies, leading to increased uncertainty and inefficiencies in addressing water-related issues impacting resource conservation, public health, and funding for public works. Preemption also threatens climate progress. For example, in 2020, cities began adopting policies to phase out natural gas use in homes

and other buildings, starting with bans on natural gas in new buildings.[125] In response, the fossil fuel industry has been working overtime to push state bills to preempt local authority to regulate these matters, with more than fourteen states considering such bills in 2021.[126] Similar problem exist in the Mississippi River Corridor. For example, many main stem states—Minnesota Wisconsin, Iowa, Missouri, Tennessee, Arkansas, and Mississippi—preempt local governments from instituting plastic bag bans.[127] Several years ago, the Missouri legislature preempted counties from imposing public health regulatory standards on concentrated animal feeding operations, or CAFOs.[128] Last year, Iowa passed a law that essentially took away the local government's ability to regulate guidelines on stormwater runoff and topsoil management.[129] Clearly, the extent of preemption varies widely by state, but it is essential to understand broader trends in addition to future preemption proposals in coming state legislative sessions.

5) CONCLUSION

The Mississippi River is a critical waterway that requires coordinated management efforts across multiple jurisdictions. Following major Clean Water Act rollbacks, the overturning of *Chevron* doctrine, and the dramatic ongoing policy shifts under the Trump administration, the balance between states and the federal government has shifted profoundly. If states truly want additional responsibilities to protect their waters, as Justice Alito noted in *Sackett*, then they must take action. Otherwise, public health and environmental issues could get to such a point that another major federal intervention like that of the 1970s would be necessary again. If state, local, and tribal governments do not step up and work together, they will be left to deal with the consequences. The failure to protect water for public health and welfare for the benefit of a select few industries is not an acceptable management strategy.

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