

Congress of the United States
Washington, DC 20515

September 6, 2022

The Honorable Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

The Honorable Gina McCarthy
National Climate Advisor
Office of Domestic Climate Policy
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Chair Mallory, Director Young, and Advisor McCarthy:

Thank you for advancing the historic Justice40 Initiative (Justice40), which targets federal investments to disadvantaged communities hit hardest by pollution, the climate crisis, and chronic disinvestment. Justice40 is a historic undertaking, and we are deeply grateful for your leadership of this complex, but crucial, transformation. As strong supporters of Justice40 and Members of Congress serving on committees with relevant jurisdiction, we write to request your consideration of several implementation priorities to ensure investments promote equity, benefit communities, fight climate change, diminish existing environmental burdens, and prevent new harms.

These priorities stem from over a year and a half of engagement with the Biden-Harris Administration, national experts, state officials, impacted communities, and environmental justice leaders. We have also conducted careful oversight of the Initiative's progress and have legislated with the goal of providing additional funding, tools, and authorities to support its success.¹

¹ Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on Environmental Injustice: Exploring Inequities in Air and Water Quality in Michigan*, 116th Cong. (Sept. 16, 2019) (online at <https://oversight.house.gov/legislation/hearings/environmental-injustice-exploring-inequities-in-air-and-water-quality-in>); H.R. 516; Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on Jumpstarting Mainstreet: Bringing Jobs and Wealth Back to Forgotten America* (June 16, 2021) (online at <https://oversight.house.gov/legislation/hearings/jumpstarting-main-street-bringing-jobs-wealth-back-to-forgotten-america>); Committee on Oversight and Reform, *Hearing on Building Back with Justice: Environmental Justice Is Central to the American Jobs Plan* (July 21, 2021) (online at <https://oversight.house.gov/legislation/hearings/building-back-with-justice-environmental-justice-is-central-to-the-american>); Committee on Oversight and Reform, *Roundtable on Tackling Peak Pollution: Achieving Environmental Justice for Frontline* (Aug. 26, 2021) (online at <https://oversight.house.gov/legislation/hearings/full-committee-hybrid-roundtable-on-tackling-peak-pollution-achieving>); Committee on Oversight and Reform, Business Meeting, Vote on Committee Print Providing for Reconciliation Pursuant to S. Con. Res. 14 (Sept. 2, 2021) (25 yeas, 18 nays) (online at <https://oversight.house.gov/legislation/markups/the-committee-print-to-implement-the-instructions->

To advance the success, longevity, and expansion of Justice40, we respectfully request that the Administration incorporate the following recommendations in forthcoming implementation guidance and additional administrative actions.

I. MEASURE JUSTICE40 THROUGH DIRECT INVESTMENTS IN DISADVANTAGED COMMUNITIES

To maximize benefits and correct for chronic underinvestment, we strongly recommend that implementation guidance clarify that the Initiative’s 40% target is a funding floor, not a ceiling. We also recommend that the guidance apply this target to investments in disadvantaged communities, not only to overall benefits in such communities. Direct investments are the clearest path to achieve a flow of at least 40% of benefits to the intended communities, as well as to ensure Justice40’s accountable, long-term success.²

This direct investment model will also reduce administrative burdens. As agencies and covered programs seek technical assistance from your offices on questions such as whether the 40% investment-benefit benchmark is measured by program, by agency, or for the initiative overall, a simple 40% direct investment floor will facilitate seamless administration.³ For these reasons, we stand with the White House Environmental Justice Advisory Council (WHEJAC) in its priority request for a “transformative and accountable process” that overcomes “systemic racial bias, inertia, and resistance to change.” Direct investments “in geography,” “in people,” and “in community” will ensure that “the fair and just distribution of 40% or more of the benefits ... reach frontline communities.”⁴

II. CREATE GOOD JOBS AND LASTING CAREERS

Cross-cutting standards like equity and place-based environmental justice standards can

provided-by-s-con-res-14-the); H.R. 5376; Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Comptroller General Gene L. Dodaro, Government Accountability Office (Dec. 15, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-12-15.CBM%20to%20Dodaro-GAO%20re%20Final%20J40%20Request.pdf>); Letter from Senator Edward J. Markey and Representative Cori Bush to President Joseph R. Biden (Feb. 9, 2022) (online at [www.markey.senate.gov/imo/media/doc/\(02.09\)%202022.02.09%20Letter%20to%20WH%20on%20CEJST_final.pdf](http://www.markey.senate.gov/imo/media/doc/(02.09)%202022.02.09%20Letter%20to%20WH%20on%20CEJST_final.pdf)); Committee on Oversight and Reform, *Press Release: Chairs Maloney and Grijalva to Hold Press Conference on Advancing Environmental Justice* (Mar. 9, 2022) (online at <https://oversight.house.gov/news/press-releases/chairs-maloney-and-grijalva-to-hold-press-conference-on-advancing-environmental>).

² Committee on Oversight and Reform, *Briefing on Focusing on Frontlines: Community Engagement Is Key to Advancing Environmental Justice* (Mar. 11, 2022) (online at <https://oversight.house.gov/news/press-releases/chairs-maloney-and-grijalva-to-hold-press-conference-on-advancing-environmental>).

³ Briefing by Government Accountability Office to Staff, Committee on Oversight and Reform (July 19, 2022).

⁴ White House Environmental Justice Advisory Council, *Final Recommendations: Justice40, Climate and Economic Justice Screening Tool, and Executive Order 12898 Revisions* (May 21, 2021) (online at www.epa.gov/sites/production/files/2021-05/documents/whiteh2.pdf).

enhance the benefits of federal investments by ensuring more members of communities of color, women, people without college degrees, and dislocated workers are represented in high-paying jobs. Similarly, high-road labor standards, local hire provisions, and domestic content and embodied carbon standards can bring good jobs to underserved areas, strengthen domestic supply chains, and increase—and even double—salaries.⁵

To that end, we recommend that implementation guidance ensure that Justice40 investments target disadvantaged communities and energy communities for the creation of local union jobs, workforce development opportunities, and the use of minority-owned and worker-owned small businesses. The Initiative can achieve these goals by guaranteeing prevailing wages through projects funded by covered investments and prioritizing project labor agreements and binding community benefit agreements that advance employment and apprenticeship in disadvantaged communities.

III. ENSURE JUSTICE40 INVESTMENTS DO NOT HARM DISADVANTAGED COMMUNITIES

We recommend that forthcoming guidance ensure that certain investments—including those that may prolong or increase greenhouse gas emissions or co-pollutants such as particulate matter and toxics—are not mistakenly counted as beneficial to communities. Technologies or projects that increase pollution, extend the life of polluting industries, or exacerbate pre-existing disproportionate exposure and projects like carbon capture and sequestration, hydrogen applications, combustion fuels, and highway expansion are not appropriate to count toward Justice40. We ask that you clarify whether these projects will be counted as benefits under Justice40. We also ask whether your offices have adopted the WHEJAC's Guiding Principles—including that “100% of investments must do no harm to environmental justice communities.”⁶ An incorrect classification of a project as beneficial could impede the Initiative's success, lower the likelihood that truly beneficial funding will flow to a disadvantaged area, and increase risks to communities.

Justice40 spending should do no harm to disadvantaged communities. We recommend that you provide guidance to implementing agencies on how to account for potential harms in the pre-implementation phase of place-based funding, in information incorporated in the development of agency scorecards, and through robust enforcement of our nation's civil rights laws such as Title VI of the Civil Rights Act. By calculating and mitigating any potential harms from investments, and by ensuring that programs meant to be beneficial truly support community wellbeing, Justice40 will foster the community buy-in needed for enduring success.

⁵ Robert Pollin, Dr. Shouvik Chakraborty, and Dr. Jeannette Wicks-Lim, *Employment Impacts of Proposed U.S. Economic Stimulus Programs: Job Creation, Job Quality, and Demographic Distribution Measures*, Political Economy Research Institute (Mar. 4, 2021) (online at <https://peri.umass.edu/images/Thrive-3-2-21.pdf>); Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

⁶ White House Environmental Justice Advisory Council, *Final Recommendations: Justice40, Climate and Economic Justice Screening Tool, and Executive Order 12898 Revisions* (May 21, 2021) (online at www.epa.gov/sites/production/files/2021-05/documents/whiteh2.pdf).

IV. CLARIFY AND EXTEND THE WHOLE-OF-GOVERNMENT APPROACH

Justice40 was first introduced in Executive Order 14008, in which President Biden announced a historic whole-of-government approach to the climate crisis—one that integrates climate considerations and actions across agencies, offices, and programs.⁷ We applaud your work in announcing covered Justice40 programs across twelve agencies to date, including the Environmental Protection Agency (EPA), the Department of Agriculture, the Department of Energy (DOE), the Federal Emergency Management Agency, the Department of Housing and Urban Development, and the Department of the Interior.⁸

To fully realize the vision of a coordinated, cross-agency perspective that delivers benefits in covered areas regardless of where funding is housed, we encourage you to continue to identify covered programs across all agencies, departments, and other federal institutions.⁹ It is especially significant that the Department of Defense be included to prioritize the accelerated remediation of formerly used defense sites and reinvestment in affected communities. In order to maximize equity co-benefits in climate investments, the Department of the Treasury should be included as well, with a focus on providing technical assistance to governments and local organizations to advance the use of clean energy and electric vehicle tax credits in disadvantaged communities. We also recommend that the Treasury Department conduct oversight of the distributional effects of such programs by race, income, and geographic community.

To increase transparency around program updates and the expansion of the list of covered programs, we recommend that the Office of Management and Budget create a centralized, publicly accessible hub for information for all programs. This office would benefit from the inclusion of multilingual accessibility, links to funding announcements and application materials, print publications, and dissemination procedures advised by the WHEJAC for sharing information with, and receiving feedback from, people in disadvantaged communities.

In addition to expanding the list of covered programs, we strongly recommend broadening the covered program areas to better reflect the scope of disproportionate harms and maximize opportunities to advance cleaner, healthier, and more resilient communities. This can be accomplished by expanding covered areas to include hospitals and public health, schools and

⁷ Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

⁸ The White House, *Justice40 Initiative Covered Programs List* (July 25, 2022) (online at www.whitehouse.gov/wp-content/uploads/2022/07/Justice40-Covered-Programs-List_v1.1_07-15-2022.pdf).

⁹ The White House, *Justice40: A Whole-of-Government Initiative* (online at www.whitehouse.gov/environmentaljustice/justice40/) (accessed July 19, 2022); Council on Environmental Quality, *Response by the White House Council on Environmental Quality to the White House Environmental Justice Advisory Council's Final Recommendations: Justice40, Climate and Economic Justice Screening Tool, and Executive Order 12898 Revisions that Were Submitted on May 21, 2021* (May 20, 2022) (online at www.epa.gov/system/files/documents/2022-05/CEQ_Response_to_the_WHEJAC_May_2021_Recommendations.pdf).

education, ecosystem protection and restoration, additional areas deemed by your offices to have clear climate impacts, and training and workforce development in expanded areas.

V. PLAN, IMPLEMENT, AND OVERSEE IN A COMPREHENSIVE MANNER

We thank the Administration for announcing that it will work with agencies and partners to further refine and incorporate useful datasets into its Climate and Economic Justice Screening Tool (CEJST).¹⁰ We recommend that CEJST be used in tandem with additional tools such as environmental justice mapping screens administered by states, EPA’s EJScreen, the Energy Justice Dashboard administered by DOE, and community self-identification.

Agencies would also benefit from clear guidance on how the CEJST will be used as part of the existing federal process to approve proposals, direct funds, inform rulemakings and permitting, and conduct other Justice40-related actions. For example, applying the tool to covered competitive grant programs could help target funds to the most vulnerable communities. We urge that grant decisions be weighted by environmental and socioeconomic factors, such as the level of burden and vulnerability to pollution and other climate and environmental threats, as well as the ways in which systemic racism and chronic disinvestment may exacerbate environmental issues in disadvantaged communities.¹¹

To ensure the administrative success of Justice40 and of President Biden’s commitment to advance racial equity for underserved communities, we recommend the establishment of a Climate Justice and Equity Office within the Office of Management and Budget (OMB) to centralize OMB’s responsibilities under Executive Order 14008, Executive Order 13985, and related efforts. As part of its climate justice mandate, the head of the office would consult with the WHEJAC, oversee agency compliance with Justice40, compile programmatic investment totals in disadvantaged communities, and analyze the benefits of those investments by applying evidence-based measurements of benefits developed by CEQ, including measurable gains for disadvantaged community residents and levels of climate and environmental disburdenment.

In addition to improving demographic data, we encourage the consideration of the cumulative impacts of multiple pollutants and pollution sources in disadvantaged communities in CEJST and across implementation oversight. The Climate Justice and Equity Office could apply relevant environmental data to use cumulative impacts to assess disproportionate burdens and measure environmental benefits more fully in disadvantaged communities. To do so, we recommend that CEQ and EPA continue to support monitoring efforts—including hyperlocal air monitoring carried out by the Pollution Accountability Team—in order to improve investment

¹⁰ *Id.*

¹¹ Center for American Progress, *How FEMA Can Prioritize Equity in Disaster Recovery Assistance* (July 19, 2022) (online at www.americanprogress.org/article/how-fema-can-prioritize-equity-in-disaster-recovery-assistance/); *FEMA Flood Program Could Violate Civil Rights Law*, Politico (June 16, 2022) (online at www.politico.com/news/2022/06/16/fema-flood-program-civil-rights-00037261); Federal Emergency Management Agency National Advisory Council, *National Advisory Council Report to the FEMA Administrator* (Nov. 30, 2020) (online at www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf).

and benefit calculations, eliminate the gap between realized benefits and investments and the 40% floor, and increase public trust.¹²

We agree with the WHEJAC that the “careful administration” of investments is “paramount to the effectiveness” of Justice40.¹³ Lessons learned during accountability exercises will strengthen the CEJST. We also suggest that these lessons inform OMB’s development of a clear, credible auditing framework to track direct investments in disadvantaged communities as a share of total related spending and to oversee the social, economic, and environmental impacts of distributed funds.

VI. IMPLEMENT FOR LONG-TERM SUCCESS

Justice40’s overall success will be determined by whether benefits compound each year within disadvantaged communities, and whether lessons learned to equitably administer funding are internalized across future budgets. To encourage this outcome, we recommend that Justice40 guidance establish robust processes for constituent engagement and for administrative coordination so that disadvantaged communities and frontline organizations can meaningfully shape program implementation.

We suggest that you advance your efforts in these areas by further simplifying the application process, expanding technical assistance by implementing entities to diversify access to funds, prioritizing local and worker-owned contractors, and providing opportunities for robust stakeholder engagement and oversight. Federal agencies should also provide state, local, Tribal, and territorial governments any necessary clarity regarding covered Justice40 programs that distribute funding through formulas. To maximize benefits from Justice40 investments distributed to state and local governments by formulas, we recommend that recipients receive clear instructions from relevant agencies about Justice40 compliance. For example, after formula funding is distributed to state and local governments, federal agencies could provide guidance on how to apply environmental and socioeconomic methods or make use of the CEJST to deliver investments to disadvantaged communities.

Sharing information and partnering with communities on program implementation also presents greater opportunity for communities to provide valuable feedback to affect agency-led

¹² Environmental Protection Agency, *EPA Administrator Regan Announces Bold Actions to Protect Communities Following the Journey to Justice Tour* (online at www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-communities-following-journey) (accessed June 10, 2022); Governor Kathy Hochul, New York State, *Press Release: Governor Hochul Announces New Statewide Community Air Monitoring Initiative, First of Its Kind in the US* (Sept. 21, 2021) (online at www.governor.ny.gov/news/governor-hochul-announces-new-statewide-community-air-monitoring-initiative-first-its-kind-us); Aclima, *Press Release: New York State Selects Aclima for First Ever Statewide Mobile Air Measurement Initiative* (July 6, 2022) (online at www.aclima.io/new-york-launch).

¹³ White House Environmental Justice Advisory Council, *Final Recommendations: Justice40, Climate and Economic Justice Screening Tool, and Executive Order 12898 Revisions* (May 21, 2021) (online at www.epa.gov/sites/production/files/2021-05/documents/whiteh2.pdf).

EJ Scorecards. Particularly in the absence of scorecards at present, we recommend that the WHEJAC be given tools to solicit community feedback that can be conveyed to CEQ, the Climate Justice and Equity Office, and other relevant offices.

We share your goal of embedding Justice40 in long-term guidance, rules, and agency policies. Because the federal workforce will ultimately be responsible for carrying this legacy forward, we urge you to build an enduring non-political civil service workforce specifically tasked with Justice40 implementation and accountability at the White House and agencies. This workforce should not be limited to environmental justice offices, but instead disseminated across offices administering covered programs.¹⁴

Because funding from the Bipartisan Infrastructure Law is already being disseminated, it is imperative that your offices expeditiously provide additional guidance to ensure that this funding translates to historic investments in disadvantaged communities.¹⁵ This guidance must immediately be distributed to agencies, states, and other entities to guide the implementation of the Justice40 Initiative. This guidance should be as comprehensive and consequential for environmental justice communities as possible, so that Justice40's transformative potential is realized.

We will continue to explore additional congressional action to improve implementation, expand accountability, and maximize investments and benefits. While we seek legislative solutions, states, local and Tribal governments, environmental justice advocates, and community organizations would benefit from an updated implementation timeline, including information on the deadline for the release of agency scorecards. We also look forward to additional releases of covered programs throughout the summer.¹⁶

We look forward to working with you to ensure that final implementation guidance advances the priority recommendations in this letter and ensures environmental justice is a permanent priority in federal spending. We strongly support the Administration's efforts to direct funding and resources to communities to redress discrimination, fight pollution, and cut emissions in support of President Biden's climate, environmental justice, and equity goals.

Thank you for your leadership on this important issue.

Sincerely,

¹⁴ *Id.*

¹⁵ Exec. Order No. 14052, 86 Fed. Reg. 64335 (Nov. 15, 2021).

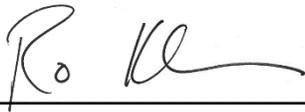
¹⁶ The White House, *Justice40 Initiative Covered Programs List* (July 15, 2022) (online at www.whitehouse.gov/wp-content/uploads/2022/07/Justice40-Covered-Programs-List_v1.1_07-15-2022.pdf); The White House, *Justice40: A Whole-of-Government Initiative* (online at www.whitehouse.gov/environmentaljustice/justice40/) (accessed July 19, 2022).



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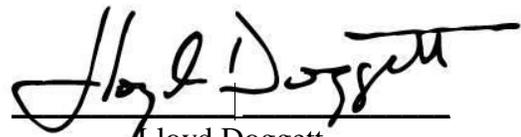
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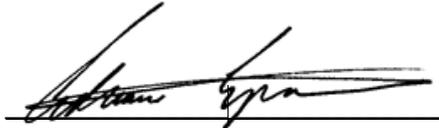
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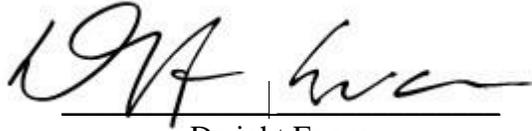
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Lloyd Doggett
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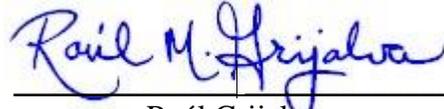
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Dwight Evans
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Jimmy Gomez
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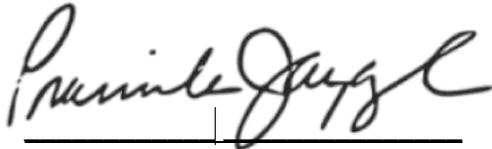
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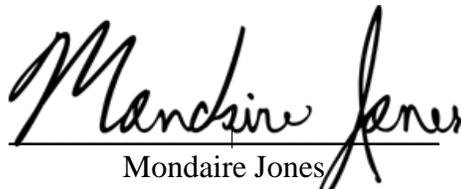
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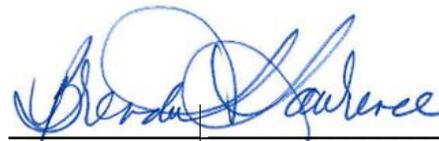
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Member of Congress



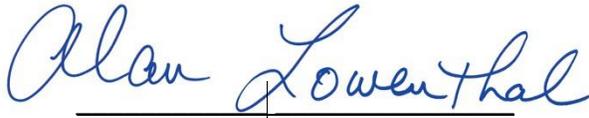
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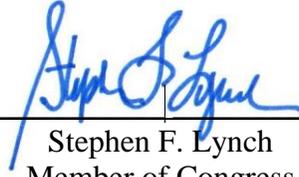
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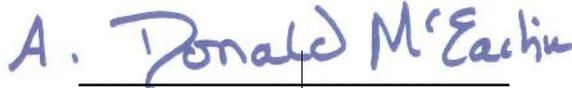
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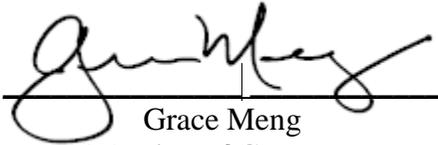
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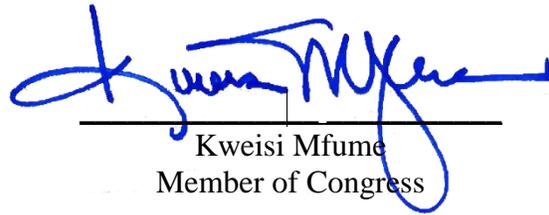
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Kweisi Mfume
Member of Congress

/s/

Jerrold Nadler
Member of Congress



Eleanor Holmes Norton
Member of Congress



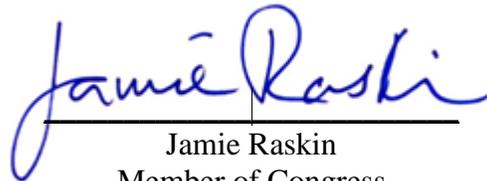
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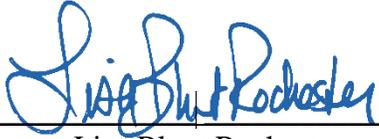
Katie Porter
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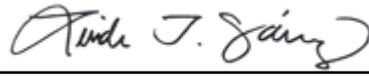
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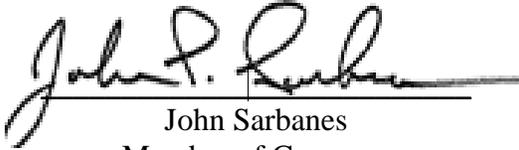
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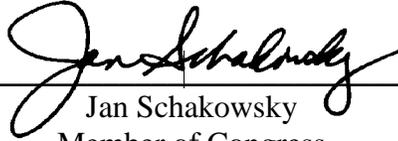
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Linda T. Sánchez
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John Sarbanes
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/s/

Robert C. "Bobby" Scott
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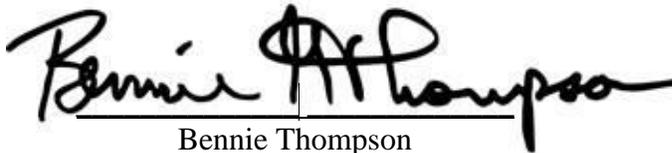
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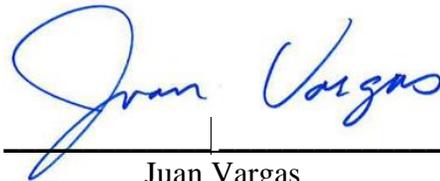
Melanie Stansbury
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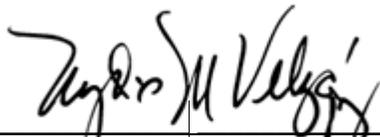
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