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Back to the Future: Creating a Bipartisan Environmental Movement for the 21st Century

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BACK TO THE FUTURE: CREATING A BIPARTISAN ENVIRONMENTAL MOVEMENT FOR THE 21ST CENTURY

by David M. Uhlmann

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"On a clear day, you can see Chicago," my father insisted.

I squinted. It was the early 1970s, and all I could see across Lake Michigan were the steel mills and oil refineries that dotted the Indiana coast, belching thick fumes into the air.

My father had been coming to the shores of Lake Michigan since the 1940s, when his parents built a small cottage along the Michigan-Indiana border in the village of Michiana, just over 60 miles from where his family lived in Chicago. He might have been able to see Chicago when he was a boy, but I couldn't.

The beaches in Michiana weren't any better, littered with alewives, a silvery fish native to the Atlantic Ocean that migrated to Lake Michigan in the late 1940s. One summer, there were so many alewives piled up on the beach that we spent our family vacation in Canada instead.

Not long after that aborted summer trip, my family ended our annual pilgrimages to Lake Michigan. I eventually went to college and law school on the East Coast, becoming a U.S. Department of Justice environmental crimes prosecutor and then an environmental law professor.

My father died in 2008. A few years later, I returned to Michiana for the first time in decades. It was a clear day, and there was the Chicago skyline, beckoning from across the lake.

I blinked in disbelief. I could see Chicago. He hadn't been making it up.

I looked to the beaches, so often covered with alewives during my boyhood summers. The dead fish were gone, with only the smooth stones, perfect for skipping, left behind.

It was a poignant moment. It also was an environmental law success story, a personal, tangible example of what the Clean Air Act (CAA)[1] of 1970 and the Clean Water Act (CWA)[2] of 1972 have meant for the environment in communities large and small throughout the United States. The CAA ridded our skies of more than a century of industrial and automobile pollution; the CWA restored lakes, rivers, and streams that had become open sewers.

Today, in the wake of a harrowing pandemic, which has visited its worst impacts on Black people and communities of color still plagued by pollution, it is easy to overlook how much we accomplished from an environmental protection standpoint over the past five decades. It also is hard to imagine, when tribal politics dictate our views and magnify our conflicts, that the environmental movement of the 1970s enjoyed enormous bipartisan support in the U.S. Congress.

We could use some of that bipartisan support for the environment right now.

In the decades since the 1970s, the United States has overcome major environmental challenges, only to witness the emergence of new, more intractable environmental problems. The CWA dramatically reduced pollution from factories and sewage treatment plants but did not limit agricultural and stormwater runoff, which have created a

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1. 42 U.S.C. §§7401-7671q, ELR STAT. CAA §§101-618.
2. 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607.

dead zone in the Gulf of Mexico, algae blooms in the Great Lakes, and depleted oxygen levels in the Chesapeake Bay. The Safe Drinking Water Act[3] established national drinking water standards but proved incapable of protecting the residents of Flint, Michigan, from aging infrastructure and bottom-line budgets, while offering a devastating example of systemic racism and how our environmental progress has too often failed to address environmental justice and left poor communities unprotected.

Yet no environmental challenge is more daunting than the existential threat of global climate disruption. The National Aeronautics and Space Administration (NASA) and National Oceanic and Atmospheric Administration (NOAA) report that 2019 was the second hottest year ever, trailing only 2016. The five warmest years on record have all occurred since 2015. Nor is this a new phenomenon: 18 of the 19 warmest years ever recorded have occurred since 2001.[4]

Polar ice and glaciers are melting. Coral reefs and rain forests are disappearing. Extreme weather events and wildfires are increasing. In the United States, we already have experienced droughts that will hamper agriculture for years, hurricanes that devastated the East Coast, Texas, and Puerto Rico, and rising sea levels that produce sunny-day flooding in Miami and other coastal cities.[5]

These are facts, not beliefs.

Moreover, climate scientists predict that the perils of the past few years are just a warm-up act. If we fail to limit greenhouse gas (GHG) emissions by 2030, searing heat, widespread drought, destructive wildfires, punishing storms, and massive flooding will become commonplace.[6] Oceans will rise later this century, which could make major East and West Coast cities uninhabitable. The Pentagon warns that climate disruption will threaten American interests abroad, since the worst effects will occur in Africa, Asia, and the Middle East, bringing political instability and mass migration.[7]

The economic hardship wrought by climate disruption will exceed the suffering caused by the COVID-19 pandemic, without any hope for a rapid, V-shaped recovery. Carbon dioxide persists in the atmosphere for decades, and feedback loops accelerate climate disruption. Once we reach the tipping point on climate, it will be too late to prevent catastrophic harm.

It is long past time for us to heed the unanimous warnings of the scientific community and take urgent steps to limit climate disruption. COVID-19 provides extant evidence about what happens when we fail to prepare for potential disaster, ignore science, and leave poor and minority communities vulnerable. We cannot repeat this same inadequate response in the face of the existential threat posed by climate disruption. We must move beyond what plagues our politics and engage in civil, thoughtful discourse about how to promote a sustainable future.

With a contentious presidential election looming amidst a pandemic, economic worries, and historic protests against systemic racism, climate action may seem less pressing than other challenges. Nothing could be further from the truth. To prevent greater public health threats and economic dislocation from climate disruption, which will disproportionately harm Black Americans, people of color, and indigenous people, we need to restore the bipartisanship that fueled the environmental movement. The fate of the planet—and our children and grandchildren—depends upon our collective action.

I. An Environmental Moment Unravels

The environmental crisis in the United States has been building for more than 25 years. Long before the election of Donald Trump, environmental protection had become one of the many issues that divide Republicans and Democrats, with support for environmental protection and climate change mitigation and adaptation careening with each change of administration.

But that partisanship did not always exist. With remarkable swiftness and nearly unanimous support—involving voting margins that would be unthinkable today[8]—Congress passed more than two dozen environmental laws during the 1970s and 1980s. Many leading environmental advocates in Congress were Republicans, and President Richard Nixon signed the first environmental laws and oversaw the creation of the U.S. Environmental Protection Agency (EPA).

The events that motivated Congress in the 1970s had appeal across partisan lines. Members of both parties were shocked by the Santa Barbara oil spill in California and the Cuyahoga River on fire in Ohio, troubled by the evacuation of the communities of Love Canal and Times Beach, and appalled by images of thousands of hazardous waste drums lining open pits at the Valley of the Drums in Kentucky and Stringfellow in California.

It was a stunning transformation. Conduct that had been lawful for nearly 200 years in the United States—dumping waste into American rivers, belching toxic pol-

3. 42 U.S.C. §§300f to 300j-26, ELR Stat. SDWA §§1401-1465.
4. *2019 Was Hottest Year on Record for Earth Say NOAA, NASA*, NOAA, Jan. 15, 2020, https://www.noaa.gov/news/2019-was-2nd-hottest-year-on-record-for-earth-say-noaa-nasa.
5. *See generally* Alexa Jay et al., *Overview*, *in* Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment Volume II, at 33, 34 (David Reidmiller et al. eds., U.S. Global Change Research Program 2018), https://nca2018.globalchange.gov/downloads/NCA4_Ch01_Overview.pdf (finding that "[t]he impacts of global climate change are already being felt in the United States and are projected to intensify in the future").
6. *See* United Nations Environment Programme, Emissions Gap Report 2019 (2019), https://wedocs.unep.org/bitstream/handle/20.500.11822/30797/EGR2019.pdf?sequence=1&isAllowed=y (finding that, "[b]y 2030, emissions would need to be 25 per cent and 55 per cent lower than in 2018 to put the world on the least-cost pathway to limiting global warming to below 2°C and 1.5°C respectively").
7. *See* Office of the Under Secretary of Defense for Acquisition and Sustainment, Report on Effects of a Changing Climate to the Department of Defense (2019), https://media.defense.gov/2019/Jan/29/2002084200/-1/-1/1/CLIMATE-CHANGE-REPORT-2019.pdf (detailing the effects of climate change on military installations and potential geopolitical instability and natural disasters attributable to climate disruption).
8. *See* Richard J. Lazarus, The Making of Environmental Law 69-73 (2004) ("The average vote in favor of major federal environmental legislation during the 1970s was 76 to 5 in the Senate and 331 to 30 in the House of Representatives, suggesting a broad bipartisan consensus.").

lutants into the air, and burying hazardous waste beneath communities—became illegal almost overnight.

The CWA prohibited all discharges into rivers and streams, unless EPA or a state environmental agency authorized the discharges. Today, what were badly polluted waters in much of the country are fishable and swimmable. The CAA created national air quality standards that save more than 100,000 lives every year—millions over its 50-year history—and will provide nearly two trillion dollars in reduced health care costs during 2020 and tens of trillions of dollars in savings since 1970.[9] The Resource Conservation and Recovery Act[10] established a cradle-to-grave regulatory system to protect public health and the environment from hazardous wastes. The Superfund program cleaned up thousands of hazardous waste sites throughout the country.

The idea that rivers and streams should be clear, that the air should be breathable, and that our communities should be free of toxic waste dumps were shared principles in the 1970s.

The moment proved fleeting.

By the 1980s, with the election of President Ronald Reagan, bipartisan support began to wane, as the party of President Teddy Roosevelt—one of the founders of the conservation movement in the United States—sought to undo the environmental gains of the 1970s.[11] President Reagan nominated Anne Gorsuch to head EPA and James Watt to lead the U.S. Department of the Interior, each of whom sought to roll back a decade of environmental progress in curbing pollution, protecting against environmental degradation, and promoting conservation.

The "Reagan Revolution" did not thwart environmental protection in the United States. There still was enough bipartisan support in Congress during the 1980s to amend the environmental laws to close loopholes[12] and strengthen both criminal and civil penalties for violations. Nonetheless, the Reagan years began our polarization over environmental issues.

Bipartisan support for environmental protection briefly revived under President George H.W. Bush, who had campaigned to be the environmental president and led passage of our last major environmental legislation, the CAA Amendments of 1990.[13] The 1990 law added protections against more than 100 hazardous air pollutants, created a cap-and-trade program to curb acid rain that was devastating New England, and implemented the requirements of the Montreal Protocol, which banned chlorofluorocarbons such as freon that were creating a hole in the ozone layer over Antarctica and exposing the earth to harmful radiation from the sun.

Yet the Bush Administration was split ideologically between environmental protection advocates like EPA Administrator William Reilly and opponents of regulation like Vice President Dan Quayle, who headed the Council on Competitiveness, and White House Chief of Staff John Sununu.[14] As the economy slid into recession in the early 1990s, a false dichotomy between economic prosperity and environmental protection calcified within the Republican party. Antiregulatory forces prevailed and bipartisan support for the environment disappeared.

With the ascendancy of Newt Gingrich as speaker of the U.S. House of Representatives in 1994, another assault on the environmental laws began. Gingrich's "Contract With America" promoted regulatory reform, which was a proxy for limiting federal environmental regulation and other public health rules and returning the United States to the pre-1970s system of state and local control.[15]

Gingrich's rollback efforts were opposed by President Bill Clinton, so Gingrich was no more successful than his Reagan-era predecessors, but the Contract With America prevented any expansion of the environmental law system. It also reified the notion that Americans needed to choose between economic prosperity and environmental protection, a false dichotomy that ignores the reality that the economy cannot thrive for long in a deteriorating environment.

Nor were Republicans the only ones who saw trade offs between the economy and the environment. While President Clinton blocked the worst excesses of the Gingrich era, his Administration prioritized economic growth over environmental protection, limiting his environmental accomplishments to the latter part of his second term in office. After the Kyoto climate accord was reached in December 1997, imposing the first international limits on GHG emissions, the U.S. Senate passed the Byrd-Hagel resolution 95-0, expressing the sense of the Senate that the United States should not ratify the accord unless it applied to developing countries—and declaring it would cause serious harm to the economy.[16]

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9. Under §812 of the CAA Amendments of 1990, Congress directed EPA to provide reports on the benefits of the Act. *See* Office of Air and Radiation, U.S. EPA, The Benefits and Costs of the Clean Air Act From 1990 to 2020 (2011), https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf.
10. 42 U.S.C. §§6901-6992k, ELR Stat. RCRA §§1001-11011.
11. *See* Christopher Sellers, *How Republicans Came to Embrace Anti-Environmentalism*, Vox, June 7, 2017, https://www.vox.com/2017/4/22/15377964/republicans-environmentalism (tracing opposition to environmental protection to forces in the western United States and the South that influenced the Reagan Administration to undertake "a frontal assault on environmental agencies and regulation").
12. *See, e.g.*, Robert Pear, *House Passes Bill to Widen Cleanup of Toxic Wastes*, N.Y. Times, Aug. 11, 1984, at 1 (describing how the U.S. House of Representatives passed a bill expanding EPA's Superfund program despite the Reagan Administration's efforts to weaken it); Philip Shabecoff, *House Votes Stronger Clean Drinking Water Act*, N.Y. Times, June 18, 1985, at A21 (describing how Congress passed bills that renewed and expanded the Safe Drinking Water Act, despite the fact that the Reagan Administration was highly critical of the legislation).
13. *See The Energy 202: How George H.W. Bush Turned Acid Rain Into a Problem of Yesteryear*, Wash. Post, Dec. 4, 2018, https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2018/12/04/the-energy-202-how-george-h-w-bush-helped-turn-acid-rain-into-a-problem-of-yesteryear/5c0590001b326b60d12800f2/ (retrospective on President Bush and his role in passage of the CAA Amendments of 1990).
14. *See* Keith Schneider, *The Nation; The Environmental Impact of President Bush*, N.Y. Times, Aug. 25, 1991, Section 4, at 4 (describing EPA Administrator Reilly as "overwhelmed" in internal Administration debates).
15. *See* Sellers, *supra* note 11 ("[t]he Republican takeover of Congress in 1994 commenced a second war on the federal environmental state").
16. A Resolution Expressing the Sense of the Senate Regarding the Conditions for the United States Becoming a Signatory to Any International Agree-

Today, Americans forget that the election of President George W. Bush in 2000 was almost as divisive as President Trump's election in 2016. During his campaign, Governor Bush pledged to set mandatory limits on the GHG emissions that cause climate change. Within weeks of assuming office, however, President Bush abandoned the pledge.[17] Instead, with almost Orwellian zeal, his Administration pursued "Clean Skies" and "Healthy Forest" initiatives that were thinly veiled efforts to limit environmental regulation at the behest of big business.

It would get worse. Vice President Richard Cheney formed an energy task force that promoted increased oil and gas drilling, including in the Arctic National Wildlife Refuge, and accelerated mountaintop removal mining, a devastating method of extracting coal by dynamiting mountain peaks throughout Appalachia.[18] The Bush EPA retreated from a Clinton-era program called New Source Review, which sought to bring creaky 1960s-era power plants into compliance with the CAA's public health protections. When the U.S. Supreme Court ruled in *Massachusetts v. Environmental Protection Agency* that the government could not refuse to make a determination whether GHGs were endangering public health and the environment,[19] President Bush demurred for more than a year, leaving the issue to his successor, President Barack Obama.

The United States finally took steps to address climate change in the first term of the Obama Administration. In 2009, EPA determined that GHGs endangered public health and the environment, which triggered new rules limiting emissions from automobiles and stationary sources of pollution like power plants, factories, and refineries.[20] The United States re-engaged international efforts to address climate change, beginning with the Copenhagen Accord in 2009, which included commitments to reduce emissions by developed countries, and culminating with the Paris Agreement in 2015, which expanded those commitments to 192 nations, including developing countries.

President Obama made clear during his second term that he saw climate disruption as a legacy issue. He gave a speech at Georgetown University in 2013 that was widely hailed as the strongest presidential leadership on climate issues. His Clean Power Plan would have regulated carbon dioxide emissions from existing power plants.[21] Already he had endorsed a second round of limitations on carbon dioxide emissions from cars and light trucks that would have increased average fuel economy to 54.5 miles per gallon by 2025.[22] Taken together, these measures addressed the two largest sources of GHG emissions in the United States and, if implemented, would have met American commitments under the Paris Agreement.

But as with health care, immigration, and gun control, President Obama could not forge bipartisan support for his environmental policies. Although Congress updated the Toxic Substances Control Act[23] during his Administration, those amendments are the only significant environmental legislation since 1990, and are nowhere near as sweeping as the laws of the 1970s.

Moreover, while President Obama offered leadership on climate issues, he chose to focus on health care and financial reform ahead of climate change when Democrats controlled both houses of Congress in 2009 and 2010, scuttling the best chance for comprehensive climate legislation when the American Clean Energy and Security Act of 2009 passed in the House 219-212 but died in the Senate during 2010. President Obama also pulled back from environmental issues after Democrats suffered losses in the 2010 mid-term elections,[24] putting off significant climate change and environmental protection efforts until his second term.

It is possible to debate whether President Obama's priorities were misplaced or reflected political reality. But the partisan stalemate that mires our politics and prevents meaningful action on climate disruption reached new heights during his Administration. The most significant environmental efforts during the Obama years occurred through executive action, which perpetuates an unsustainable approach where support rises or falls depending upon which party occupies the White House. The net result is that public health and the environment are less safe, businesses labor under regulatory uncertainty, and the federal government lacks continuity in its approach to climate disruption, all to our collective detriment—and all before President Trump.

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ment on Greenhouse Gas Emissions Under the United Nations Framework Convention on Climate Change, S. Res. 98, 105th Cong. (1997).

17. Douglas Jehl & Andrew Revkin, *Bush, in Reversal, Won't Seek Cuts in Emissions of Carbon Dioxide*, N.Y. Times, Mar. 14, 2001, at A1.
18. *See* Timmons Roberts & Liam Downey, *When Bush and Cheney Doubled Down on Fossil Fuels: A Fateful Choice for the Climate*, Brookings, July 7, 2016, https://www.brookings.edu/blog/planetpolicy/2016/07/07/when-bush-and-cheney-doubled-down-on-fossil-fuels-a-fateful-choice-for-the-climate/ ("rather than leading the world to a greener future, the Bush White House set the U.S. and the world back 15 years in their attempts to rein in the climate crisis"). *See also* U.S. General Accounting Office, Energy Task Force: Process Used to Develop the National Energy Policy (2003), https://www.gao.gov/new.items/d03894.pdf (describing top-down process and private meetings that resulted in the May 2001 Report of the National Energy Policy Development Group led by Vice President Cheney).
19. 549 U.S. 497, 37 ELR 20075 (2007) (holding that GHGs fell within the CAA's "capacious definition" of air pollutants and that EPA must base its decision about whether to regulate on the statute).
20. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496 (Dec. 15, 2009) (endangerment finding); Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Fuel Economy Standards, 75 Fed. Reg. 25324 (Oct. 30, 2009) (mobile source regulations); Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31514 (June 3, 2010) (stationary source regulations).
21. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 40 C.F.R. pt. 60 (2015).
22. Final Rule for Model Year 2017 and Later Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62623 (Oct. 15, 2012).
23. 15 U.S.C. §§2601-2692, ELR Stat. TSCA §§2-412.
24. *See, e.g.*, Statement by President Barack Obama on the Ozone National Ambient Air Quality Standards (Sept. 2, 2011), http://www.whitehouse.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards (requesting that EPA delay implementation of the ozone national ambient air quality standards until 2013); News Release, U.S. EPA, Statement by EPA Administrator Lisa P. Jackson on the Ozone National Ambient Air Quality Standards (Sept. 2, 2011), https://archive.epa.gov/epapages/newsroom_archive/newsreleases/e41fbc47e7ff4f13852578ff00552bf8.html (acceding to the president's request).

II. Wolves Guarding Sheep

President Trump campaigned on the promise to reverse the environmental gains of the Obama Administration and reduce EPA to "little tidbits."[25] After his election, he appointed a leading climate denier and opponent of environmental regulation, Myron Ebell, to head his EPA transition team. He selected Oklahoma Attorney General Scott Pruitt, who had sued EPA dozens of times during the Obama Administration, to lead EPA. Pruitt filled many of the senior positions at EPA with former staffers of U.S. Sen. James Inhofe (R-Okla.), who infamously brought a snowball to the Senate floor in 2015 to demonstrate that climate change is a hoax.

It was the environmental equivalent of wolves guarding sheep. Environmental advocates feared the worst—and their fears quickly became reality.

The Trump Administration began with Congress invalidating a number of environmental regulations enacted during the last year of the Obama Administration under the Congressional Review Act (CRA), which allows Congress to "disapprove" recently enacted regulations. Prior to 2017, the CRA had been used once, at the beginning of the Bush Administration, to repeal ergonomic rules enacted by the Occupational Safety and Health Administration.[26]

At the start of the Trump Administration, members of Congress proposed to eliminate more than 60 rules using the CRA, many of them environmental measures. Congress eventually invalidated 16 regulations, including a stream buffer zone rule to protect tributaries from mountaintop removal mining that had been under consideration since the end of the Bush Administration and two rules protecting public lands.[27] Repeal of another environmental rule, limiting methane emissions from fracking on public lands, failed because Sen. John McCain (R-Ariz.) refused to cast the decisive vote for repeal. But an ominous tone had been set.

In his first 18 months in office, President Trump sought to repeal or replace more than 80 environmental regulations. Federal courts blocked many of the rollback efforts, because the Trump Administration ignored rules that govern the regulatory process. In other instances, the rules were vulnerable to legal challenges, because the Trump Administration did not marshal scientific evidence to support its policy changes and disregarded public health risks.

Many of the rollbacks sought by President Trump—now reaching more than 100 in number[28]—appear justified by little more than antipathy to President Obama. Whatever his motivation, however, President Trump has moved the United States further from the broad-based support for environmental protection that once prevailed, and in ways that will cause long-term increases in pollution.

EPA scuttled the Clean Water Rule enacted in 2015 to protect tributaries of rivers and streams from harmful pollution,[29] despite agreement since 1977 across administrations that the CWA must protect upstream tributaries to preserve downstream rivers and streams. In April 2020, at the height of the pandemic, EPA refused to tighten CAA controls on particulate matter that cause thousands of deaths every year from respiratory illness—despite evidence that Americans with respiratory illness are more likely to die from the coronavirus.[30]

But nowhere has the Trump Administration been more reckless than its rejection of climate science and the need to take action to prevent catastrophic climate disruption. EPA has removed all references to climate change from its website, and the Trump Administration no longer considers carbon pollution in environmental decisionmaking. During 2017, President Trump announced that he intended to withdraw from the Paris Agreement in 2020, leaving the United States as the only nation that would not be part of the landmark agreement.[31]

The loss of American leadership on climate efforts comes at a perilous time. The Paris Agreement sought to limit the increase in global temperatures to two degrees centigrade over pre-industrial limits, but it was not clear that the agreement would have been sufficient to meet that goal even with full participation by the United States. Compounding the problem, scientists now believe that we must be more ambitious in our goals—seeking to limit the increase in global temperatures to 1.5 degrees centigrade—to avert climate disaster later this century.[32]

Despite overwhelming scientific proof that fossil fuels cause climate disruption, EPA rescinded the 2015 Clean Power Plan that limits carbon pollution from existing power plants under the CAA,[33] until recently the largest source of GHG emissions in the United States. To be fair,

25. *See* Brady Dennis et al., *With a Shrinking EPA, Trump Delivers on His Promise to Cut Government*, Wash. Post, Sept. 8, 2018, https://www.washingtonpost.com/national/health-science/with-a-shrinking-epa-trump-delivers-on-his-promise-to-cut-government/2018/09/08/6b058f9e-b143-11e8-a20b-5f4f84429666_story.html.
26. *See* Stuart Shapiro, *The Congressional Review Act, Rarely Used and (Almost Always) Unsuccessful*, Hill, Apr. 17, 2015, https://thehill.com/blogs/pundits-blog/lawmaker-news/239189-the-congressional-review-act-rarely-used-and-almost-always.
27. *See* Congressional Research Service, The Congressional Review Act (CRA): Frequently Asked Questions app. A (2020) (listing all rules overturned using the CRA).
28. *See* Nadja Popovich et al., *The Trump Administration Is Reversing 100 Environmental Rules. Here's the Full List*, N.Y. Times, July 15, 2020, https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks.html.
29. Definition of "Waters of the United States"—Recodification of Pre-Existing Rules, 84 Fed. Reg. 56626 (Oct. 22, 2019) (repealing Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37054 (June 29, 2015)).
30. Juliet Eilperin et al., *EPA Won't Tighten Soot Rules, Even as Evidence Points to Link Between Air Pollution and Coronavirus Risks*, Wash. Post, Apr. 14, 2020, https://www.washingtonpost.com/health/2020/04/14/epa-pollution-coronavirus/.
31. Robinson Meyer, *Syria Is Joining the Paris Agreement. Now What?*, Atlantic, Nov. 8, 2017, https://www.theatlantic.com/science/archive/2017/11/syria-is-joining-the-paris-agreement-now-what/545261/.
32. *See* Intergovernmental Panel on Climate Change, Global Warming of 1.5°C. An IPCC Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty (2018), https://www.ipcc.ch/sr15/.
33. Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32520 (July 8, 2019).

the approach taken by the Obama Administration was controversial, because it proposed to regulate "beyond the fenceline" of the existing power plants. In most cases, the CAA limits pollution from individual "stationary sources" such as factories, plants, and refineries; the Clean Power Plan relied upon statewide clean energy budgets.

Instead of developing an alternative approach that would reduce GHG emissions within the fenceline, however, the Trump Administration proposed a replacement plan that would not result in any meaningful pollution reduction. In doing so, President Trump put his quixotic campaign pledge that he would revive the coal industry ahead of his obligation to protect the United States from climate disruption and toxic pollution from coal plants.

Most recently, the Trump Administration announced its intent to repeal 2022-2025 fuel economy standards that would limit carbon pollution in the transportation sector, now the largest source of GHG emissions in the United States. During the federal government's bailout of the automotive industry, car manufacturers had agreed to a significant increase in fuel economy standards for 2017-2025. That agreement was subject to a mid-term review that would determine whether those standards were attainable for the final years covered by the proposal.

In the waning days of the Obama Administration, EPA determined that the more stringent standards were attainable and therefore would be binding on auto manufacturers.[34] But after President Trump ordered EPA and the U.S. Department of Transportation to reconsider, the agencies decided to freeze fuel economy standards at 2020 levels and to challenge California's long-standing authority to set more stringent fuel economy and emission reduction standards.[35] In so doing, the Trump Administration went beyond any changes sought by the automotive industry, much of which had entered an agreement with California to implement the higher standards.

Whether President Trump succeeds in his environmental rollbacks will depend on the outcome of the 2020 election, since most of his efforts remain mired in litigation and would be reversed if former Vice President Joseph R. Biden becomes president. Whether the United States withdraws from the Paris Agreement also is on the ballot, because the withdrawal will not occur until the day after the 2020 election and would be reversed in January 2021 if Biden were elected.

Whatever the outcome of the election, President Trump's anti-environmental crusade has exacted enormous opportunity costs. We have fallen further behind in efforts to prevent climate disruption, shortening the window to avoid its worst effects, and we have exposed communities to dangerous air pollution that has worsened the impact of the pandemic. But the excesses of the Trump Administration and the calamities of the pandemic also may be clarifying: we cannot continue to ignore climate disruption and treat the environment as just another partisan divide.

III. Moving Beyond Tribal Politics

A changing climate and a deteriorating environment do not care about our tribal politics. Much like pandemics, climate change and environmental protection should not be Republican or Democrat issues; they are not challenges facing only the heartland or coastal cities. Extreme weather occurs in different ways in different parts of the country but wreaks havoc everywhere.

Conceptually, environmental consensus should not be difficult to achieve. We might differ about how to prevent climate disruption and protect the planet, but who does not want air that is healthy to breathe, water that is safe to drink, and a world freed from climate disaster? We all depend upon a healthy planet for our survival. We all will suffer if we fail to act.

Given the extent to which the country is polarized, it is fair to be skeptical about a return to bipartisanship regarding the environment, particularly when we struggle even to agree that climate change is a problem and that we are its cause. Yet, our environmental history tells us that we can come together around environmental issues, even when the nation is badly divided.

The parallels between 1970 and 2020 are striking. As tumultuous as our politics are today—and as uncertain as we have become about who we are as a country and what values we share—the same conditions were present at the start of the environmental movement.

Then as now, controversial issues divided the country, from civil rights for Black Americans and equal rights for women to opposition to the Vietnam War—and those conflicts spilled into the streets with riots in Los Angeles, Detroit, and Washington, D.C., and unrest throughout the country. Americans worried about an imperial presidency, adherence to the rule of law, and threats to democratic norms. President Nixon resigned before Congress impeached him over Watergate, but he maintained an enemies list, railed against the media, and weaponized law enforcement and the National Guard against Vietnam War protesters.

In a United States roiled by far-reaching social change and turmoil, a desire for consensus and reconciliation emerged, fueling the environmental movement.[36] Transformative change ensued, altering industrial practices and waste management in every sector of the economy. Today, when identity politics polarize the country, many Americans want to move beyond divisiveness, partisanship, and the sense that the country cannot come together on issues that matter.[37] We face an existential environmental threat

34. U.S. EPA, Final Determination on the Appropriateness of Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emission Standards Under the Midterm Evaluation (2017).

35. Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24174 (Apr. 30, 2020).

36. As Theodore White observed, "[T]he environment[al] cause had swollen into the favorite sacred issue of all politicians, all TV networks, all writers, all good-willed people of any party." Theodore White, The Making of the President 1972, at 45 (1973).

37. *See* Dante Chinni & Sally Bronston, *Americans Are Divided Over Everything Except Division*, NBC News, Oct. 21, 2018, https://www.nbcnews.com/politics/first-read/americans-are-divided-over-everything-except-division-

that requires another economywide paradigm shift, this time in how to become carbon-free and ensure a sustainable future.

In addition to the historical precedent for bipartisan environmental action, public opinion is shifting toward the need for climate action. During April 2020, at the height of the pandemic, data from Yale University showed that record levels of Americans recognize that climate change is happening (73%), that climate change is somewhat, very, or extremely important to them (66%), and that they feel a personal responsibility to reduce global warming (66%).[38]

Millennials express concern about climate disruption and support climate action in even greater numbers.[39] Amongst millennials, there is less of a partisan divide between Republicans and Democrats about climate disruption—and a growing sense that younger Republican voters will demand that their party take far more proactive positions on climate disruption. Climate disruption has the potential to become a defining generational issue, as demonstrated by youth movements such as Sunrise and divestment efforts that are exerting increased political influence.

Numerous bipartisan and nonpartisan groups have formed to push for climate action. The Climate Leadership Council includes as founding members former secretaries of state, treasury, and energy, EPA administrators, Federal Reserve Board chairpersons, and top economic advisors from both Republican and Democratic administrations—along with dozens of major corporations.[40] Although its numbers are modest, the Climate Solutions Caucus in the House has 64 members, nearly 40% of them Republicans; its Senate counterpart has 14 members evenly divided between Democrats and Republicans.[41] Meanwhile, the nonpartisan Citizens' Climate Lobby has grown to more than 400 chapters in the United States.[42]

After President Trump announced his intent to withdraw from the Paris climate accord, more than 3,500 signatories from all 50 states, including business leaders, governors and mayors, tribal leaders, university presidents, faith leaders, and cultural institutions, joined the "We Are Still In" initiative and pledged to meet America's commitment under the accord.[43] The U.S. Climate Alliance, a bipartisan group of 25 states and Puerto Rico, also pledged to reduce GHG emissions to meet America's commitments.[44]

Increased public support for climate action has emerged against a backdrop of state and local environmental leadership. California has pioneered GHG emission reductions, with an aggressive climate change mitigation program and the goal of becoming carbon-neutral—and 100% renewable energy—by 2045. Hawaii has pledged to become carbon-neutral by 2045. For the past decade, a coalition of 10 states in the northeastern United States—including four with Republican governors (Maryland, Massachusetts, New Hampshire, and Vermont)—has created a regional cap-and-trade program to reduce GHG emissions.[45]

The transition to clean energy is accelerating throughout the United States. Over the past decade, the cost of wind and solar energy has plummeted, becoming less expensive than coal in 2018 and less expensive than gas in 2019. The largest surges in wind and solar production are occurring in the industrial heartland—many of them traditionally Republican states—with Texas boasting the most expansive clean energy grid in the United States. Thirty states and the District of Columbia have renewable portfolio standards, which set minimum targets for renewable or alternative energy within those states, and seven additional states have renewable energy goals.[46]

Perhaps the most aggressive actions have been taken by local governments, which are at the vanguard of mitigation and resilience efforts under both Republican and Democratic mayors. Miami, New York, and Boston have committed extensive resources to climate resilience, as have smaller cities and towns in the heartland, such as Carmel, Indiana, and Grand Rapids, Michigan. Hundreds of cities now have sustainability officers so that urban planning, transportation, food, and water systems can be more sustainable and adapt to climate change.

Major corporations also have dramatically increased their environmental stewardship and sustainability efforts. Corporations have a fiduciary responsibility to maximize shareholder value, but an increasing number of companies recognize that they cannot thrive in a resource-constrained world ravaged by climate disruption. In August 2019, the Business Roundtable issued the "Statement on the Purpose of a Corporation," which reflected an emphasis on

n922511 (finding that 80% of Americans think the country is divided and 90% that it is a serious problem).

38. Yale Program on Climate Change Communication & George Mason University Center for Climate Change Communication, Climate Change in the American Mind (2020), https://climatecommunication.yale.edu/wp-content/uploads/2020/05/climate-change-american-mind-april-2020b.pdf. *See also* Ipsos et al., America's Hidden Common Ground on Climate Change (2020), https://www.ipsos.com/sites/default/files/ct/news/documents/2020-01/hidden_common_ground_climate_change_topline_12420.pdf.
39. Matthew Ballew et al., *Young Adults, Across Party Lines, Are More Willing to Take Climate Action*, Yale Program on Climate Comm., Apr. 28, 2020, https://climatecommunication.yale.edu/publications/young-adults-climate-activism/.
40. *See* Climate Leadership Council, *Home Page*, https://clcouncil.org/ (last visited Aug. 14, 2020) (promoting carbon dividends as most cost-effective, equitable, and politically feasible form of climate solution).
41. *See* Bipartisan House Climate Solutions Caucus, *Home Page*, https://teddeutch.house.gov/climate/ (last visited Aug. 14, 2020); Bipartisan Senate Climate Solutions Caucus, *Home Page*, https://www.coons.senate.gov/climate-solutions-caucus/ (last visited Aug. 14, 2020).
42. *See* Citizens' Climate Lobby, *Home Page*, https://citizensclimatelobby.org/ (last visited Aug. 14, 2020) (formed as "non-profit, non-partisan, grassroots advocacy effort focused on national policies to address climate change").
43. *See* We Are Still In, *Home Page*, https://www.wearestillin.com/ (last visited Aug. 14, 2020) (declaration now signed by more than 3,800 American leaders stating that they "will continue to support climate action to meet the Paris agreement").
44. *See* U.S. Climate Alliance, *Home Page*, http://www.usclimatealliance.org/ (last visited Aug. 14, 2020) ("a bipartisan coalition of governors committed to reducing greenhouse gas emissions consistent with the goals of the Paris Agreement").
45. *See* Regional Greenhouse Gas Initiative (RGGI), *Home Page*, https://www.rggi.org/ (last visited Aug. 14, 2020) ("the first mandatory market-based program in the United States to reduce greenhouse gas emissions"). The commonwealth of Virginia will join RGGI in January 2021, making it the 11th state to join the RGGI program to reduce GHG emissions.
46. *See State Renewable Energy and Portfolio Standards and Goals*, Nat'l Conf. St. Legislatures, Apr. 17, 2020, https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx (noting that most state targets are between 10% and 45% but that 14 states have requirements of 50% or higher).

the triple bottom line of corporate sustainability (people, profits, and planet). The statement committed "to protect the environment by embracing sustainable practices across our businesses."[47] Notably, the Business Roundtable announced in September 2020 that it now supports a price on carbon to limit GHG emissions.[48]

Examples abound of successful corporate sustainability programs. Google, which pioneered sustainability efforts, committed in September 2020 to become carbon-neutral by 2030. More than a decade ago, Walmart set a goal of meeting 100% of its energy needs through renewable energy and achieving zero waste; in September 2020, the company declared that it would achieve zero emissions by 2040. Since 2012, Microsoft has imposed a carbon-pricing system on its operating divisions, with the goal of reducing the company's carbon footprint, incentivizing more sustainable business practices, and creating funding for energy-efficiency initiatives and carbon offsets. As of 2017, nearly 1,400 companies—including 100 companies in the Fortune 500—had internal carbon-pricing programs.[49]

Alongside corporate sustainability efforts, socially responsible investing and impact investing are poised to grow exponentially. Historically, socially responsible investing steered billions of dollars from cigarette companies and gun manufacturers; a similar movement away from investment in fossil fuel production and toward clean energy and fulfillment of the United Nations Sustainable Development Goals could have significant impacts. Already, more than 1,200 institutional investors with assets exceeding $14 trillion have committed to some form of fossil fuel divestment, including pension funds, philanthropies, cities and towns, and universities.[50]

Taken together, increased public support for climate action, expanded state and local efforts, and enhanced corporate environmental stewardship and impact investing create powerful drivers for a resurgence in bipartisan support for environmental protection. Indeed, grassroots, community-based, and public- and private-sector efforts may prove more enduring than requirements imposed by the federal government. They also may make it easier for the country to come together in support of national actions to limit climate disruption and promote a more sustainable future that involve scaled-up versions of what already is occurring in much of the country.

47. Press Release, Business Roundtable, Business Roundtable Redefines the Purpose of a Corporation to Promote "An Economy That Serves All Americans" (Aug. 19, 2019), https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

48. Greg Ip, *Business Shifts From Resistance to Action on Climate*, Wall St. J., Sept. 16, 2020, at https://www.wsj.com/articles/business-shifts-from-resistance-to-action-on-climate-11600233503.

49. *See* CDP, Putting a Price on Carbon: Integrating Climate Risk Into Business Planning (2017), https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/738/original/Putting-a-price-on-carbon-CDP-Report-2017.pdf?1507739326 (stating that 1,389 companies have disclosed to CDP that they have or are implementing carbon-pricing plans).

50. *See* Fossil Free: Divestment, *1000+ Divestment Commitments*, https://gofossilfree.org/divestment/commitments/ (last visited Aug. 14, 2020) (identifying 1,244 divesting institutions with investments totaling $14.61 trillion).

IV. Conclusion

In 2004, the razor-thin margin of victory for President Bush over Sen. John Kerry (D-Mass.) was attributable at least in part to opposition to marriage equality in Ohio. Just one decade later, fueled by state action and bipartisan support that crossed generational lines, the Supreme Court recognized marriage equality as a constitutional right—and in June 2020, the Supreme Court ruled 6-3 that discrimination based on sexual orientation violates federal law.[51] That centuries of hatred could yield so rapidly to protect individual freedom speaks volumes about the potential for a similar paradigm shift in our environmental values to prevent climate catastrophe.

Of course, recent history is replete with examples of much-needed policies, including immigration reform and gun control, that have not become law despite their popularity, because of the stranglehold of special interest money and the polarization that cripples our politics. In addition, while there is historical precedent for bipartisan environmental action, the changes that occurred in the 1970s pre-dated the emergence of media sources that inflame partisan tensions and foment misinformation, a development epitomized by climate denial.

What nonetheless makes bipartisan environmental support possible is the degree to which its seeds have been sown in communities across America, the extent to which sustainability has become a focus in major American businesses, and the ways in which market forces already are driving much of the transition toward a carbon-free economy. The fact that clean energy will require major infrastructure investment aligns well with the fiscal policies that most economists advocate to address the economic fallout from the pandemic and help rebuild a shattered economy. The disproportionate impact of climate disruption on poor communities of color should make climate action a priority for Americans committed to ending systemic racism.

With grassroots climate efforts and market forces converging even as climate disruption becomes a defining generational issue, we stand at the cusp of a resurgence in bipartisan support for the environment. That we are perched on the precipice of environmental disaster, if we do not reduce GHG emissions drastically by 2030, gives climate action the urgency that has generated bipartisanship in the past. Against this backdrop, with an increasingly willing public, perhaps we need only enlightened national leadership to come together to save the earth.

51. *See* Bostock v. Clayton County, 590 U.S. ___ (2020) (Title VII prohibition of discrimination based on sex extends to sexual orientation). *See also* Obergefell v. Hodges, 576 U.S. 644 (2015) (right to same-sex marriage).