

*ISPS Working Paper Series*

# **Of Stasis and Movements**

*Climate Legislation  
in the 111<sup>th</sup> Congress*

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## **Executive Summary**

The 2008-2010 campaign to pass climate legislation was one of the largest efforts in the history of energy and environmental politics. The campaign included some of the country's largest corporations, best-financed nongovernmental organizations, and most powerful political figures in Congress. Yet despite initial legislative success in the House of Representatives and the strong forces arrayed in support of a bill, the Senate dropped climate from consideration in the summer of 2010.

In many ways, the environmental movement has yet to recover. Climate change has all but disappeared from public debate, and no new movement-wide strategies have emerged. Such a high profile defeat might be expected to attract substantial academic attention, yet little analysis has been forthcoming. This paper addresses the gap in scholarship, seeking to inform both academic understanding of climate politics and provide insights to practitioners and policymakers. It first analyzes the barriers that protected the status quo and then, through comparison with other legislative campaigns, discusses the political forces that might have helped the climate coalition succeed.

Four barriers to legislative success combined in complicated ways to protect the status quo: partisan polarization, political geography, energy interests, and the recession. First, the combination of intense partisanship and the political geography of energy substantially reduced the number of legislators inclined to support action on climate. The energy industry's power and influence, based on decades of virtual control of energy policymaking, reinforced the positions of opponents and at the same time gave pause to both those unsure of their positions and those considering reform. The 2008 recession worked in a myriad ways to protect the existing policy regime by increasing political polarization, raising the profile of energy prices, reinforcing the power of the energy industries, and shifting political priorities more broadly.

But defeat was not inevitable. The 111<sup>th</sup> Congress saw major legislative victories on a host of other issues. The passage of the Affordable Care Act in particular suggests that there was room for major reforms on domestic issues – even those touching a large segment of the economy that carried uncertain fiscal and financial impacts. The movement for healthcare reform aligned three sets of forces that were absent from the

climate campaign. The first was public opinion. Issues of healthcare were more immediate to the public than issues of the environment in general and climate in particular. Second was grassroots mobilization. Where the environmental campaign focused largely on inside-the-beltway strategies, the campaign for healthcare devoted substantial energy to large-scale public organizing. Third was presidential leadership. Where Obama was weak on climate he was strong on healthcare, and his focus helped drive the successful campaign.

These three sets of forces are all closely related. Supportive public opinion and mobilization depend on the strategies of legislative campaigns; where the healthcare movement focused on building public support for reform, the climate movement focused largely on recruiting support within Washington, DC. These two approaches shaped the president's priorities. Recently available evidence about Obama's first term and about healthcare reform suggest that the president's decision to prioritize healthcare was based on his perception of the public's support for reform – because health attracted more public attention and because there was a stronger movement for reform, Obama chose to raise healthcare to the top of the agenda.

The historical record of environmental policymaking confirms that public opinion and public mobilization are central if not absolutely critical elements of campaigns seeking regulation on economy-wide issues. In fact many of the major moments of environmental lawmaking – like the Wilderness Act of 1964, the spate of legislation in the early 1970s, and the Superfund legislation of the 1980s – emerged from a combination of grassroots mobilizations and expressions of public support.

The failure of the climate campaign to pay attention to environmental political history is symptomatic of a broader challenge facing the environmental movement. Over the last four decades the environmental movement has consolidated into a set of large, mainly Washington-based institutions. These organizations effectively use science, law, policy, and lobbying to influence debates at the elite level; they are not set up to mobilize public support for major reforms. This strategy of focusing more on law and policy than on citizen engagement and movement building has yielded important benefits and has led to successful defenses of previous victories, but, as the climate campaign demonstrated, the approach also has limitations that must be recognized.

## Introduction

### *Overview*

The 2008-2010 campaign for climate legislation was one of the largest political campaigns in the history of energy and environmental policy. Though the idea for climate legislation originated among environmental groups, by the 111<sup>th</sup> Congress the movement for reform had expanded beyond the traditional green community. It included some of the country's largest corporations, from manufacturing giants like General Electric to leading tech companies like eBay to coffee leviathan Starbucks. Climate was a flagship issue for the Democratic Party, and the last three Democratic presidential nominees – Al Gore, John Kerry, and Barack Obama – took up the cause as their own. In the 2008 presidential election, meanwhile, virtually the only issue on which Obama and John McCain could find common ground was the need for action on climate. Everyone from rock stars to foreign presidents pushed Congress for action, while millions of Americans signed their names to petitions for change.

Yet despite the strong forces arrayed in support of a bill, Congress dropped it from consideration in the summer of 2010. Not surprisingly, the environmental movement has been in a state of uncertainty ever since. Expectations for success had been high, and some commentators read the defeat as fatal to the movement.<sup>1</sup>

Such interpretations are an overreaction. The campaign in the 111<sup>th</sup> Congress was not the first of its kind. Since the late 1980s, advocates have tried again and again to create political momentum for action on climate. The last spike in such momentum was in 1993, when President Clinton lost an even higher profile political fight on his BTU tax. The climate campaign of 2008-2010, in other words, is only the most recent iteration in

an ongoing political struggle. Reforming the work of the U.S. energy system is the work of decades, not years. Moreover, climate legislation aims to build on and expand a broader environmental policy framework developed in the 1960s and 1970s that itself built on policies dating back to the early 1900s. The project of environmental protection and resource stewardship has been underway for more than a century, and will continue far into the future.

Understood as one battle in a longer war to deal with the dangerous by-products of modern industrial society, the 2008-2010 climate campaign provides important lessons about the political dynamics of environmental policymaking in general and energy and climate policy in particular. As the movements and industries that support action on climate look forward to Obama's second term and beyond, the events of the 111<sup>th</sup> Congress can provide both important lessons and strategic insights.

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Given the importance of the climate campaign, surprisingly little has been written. The best discussions to date have been journalistic ones, chief among them Ryan Lizza's account in the *New Yorker* in October 2010, "While the World Burns,"<sup>2</sup> and a 2010 book by Eric Pooley, *The Climate War*, which follows the climate campaign up through the passage in the House (but ends before failure in the Senate).<sup>3</sup> In addition, Matthew Nisbet of American University prepared a report on the subject, *Climate Shift*.<sup>4</sup> That report, however, generated substantial controversy.<sup>5</sup> Nisbet aimed to show that the climate campaign was, at least financially, evenly matched with the energy industry. However, Nisbet made some questionable assumptions. For example, in estimating the strength of the environmental lobbying campaign, Nisbet included the full lobbying budgets of



USCAP corporate partners like General Electric and Ford Motors, vastly overestimating the power of USCAP on Capitol Hill.<sup>6</sup> Although Nisbet was explicit in his methodology, the bottom-line results were seen as deeply misleading and his conclusions as unsupported by the data.<sup>7</sup> Critics also noted that the report was funded by the Nathan Cummings Foundation, a foundation considered critical of the environmental movement in general and cap-and-trade in particular. For these reasons, and others, the report has been somewhat discredited.

This paper aims to help guide decision makers on Capitol Hill and in environmental organizations as well as philanthropists by adopting a rigorous and objective perspective, one grounded more in political science and history than in particular organizational objectives. Compared to previous accounts, this essay benefits both from new sources of data made available since 2010 and from the simple passage of time that provides opportunity for more systematic review. From a synoptic perspective, this paper aims to answer two fundamental questions:

*(1) What were the most important political barriers protecting the status quo on energy and climate in 2009-2010?*

*(2) What political forces might have helped overcome those barriers?*

In answering those questions, the article looks beyond the decisions of individual legislators and organizations and into some of the deeper causes operating in the political environment.

### **Essay Structure**

The paper begins with a timeline of major events leading up to and through the 111<sup>th</sup> Congress. The second part turns to a discussion of the forces protecting the current energy regime. Beyond the obvious structural barriers to success, such as the system of committees in the House and Senate and the Senate filibuster, a combination of intense partisanship and the political geography of energy substantially reduced the number of legislators inclined to support action on climate. The entrenched power of the energy industry, a power based on decades of virtual control of energy policy making, further reinforced the positions of opponents and at the same time gave pause both to those unsure of their positions and those considering reform. The 2008 recession worked in a myriad ways to further protect the status quo by increasing political polarization, raising the salience of energy prices, reinforcing the power of the energy industries, and shifting political priorities more broadly.

Part 3 turns to a discussion of political forces that could have reinforced the climate movement in its efforts to pass a bill. Comparing the climate campaign with the campaign for health care in the 111<sup>th</sup> Congress and with previous environmental legislation drives, the paper reviews three forces that were notably absent: supportive public opinion, grassroots mobilization, and presidential support. The added political pressure from positive public opinion, widespread mobilization, and dynamic presidential leadership could have reshaped the political landscape from 2008 to 2010 and widened the space for reform. The absence of these forces can be traced back to the structures and strategies of the climate campaign and the environmental movement more broadly. The

discussion concludes in Part 4 by summarizing the argument and suggesting some further points for consideration.

## **Part 1: Timeline**

### **1993:**

- President Bill Clinton proposes an ambitious energy levy – the BTU (British thermal units) tax – which would have assessed taxes, based on heat content, on coal, natural gas, liquefied petroleum gases, natural gasoline, nuclear-generated electricity, hydro-electricity, and imported electricity. The tax narrowly passed in the House without a single Republican vote and died in the Senate.<sup>8</sup> The Republicans subsequently swept the 1994 House elections; 28 Democrats who had voted for the BTU tax were turned out office. The impact of the ultimately wasted BTU vote on House Democrats becomes known as “getting BTU’d.”<sup>9</sup>

### **1997:**

- In July, on a vote of 95-0, the Senate adopts the Byrd-Hagel Resolution, expressing the sense of the Senate that the U.S. should not sign any international climate treaty that would seriously harm the U.S. economy or that would bind the U.S. to carbon reductions in the absence of similar commitments by developing countries.<sup>10</sup>
- In December, the United Nations Conference of the Parties, meeting in Kyoto, Japan, adopts the Kyoto Protocol, an international treaty to cap global carbon emissions. Vice President Al Gore played a significant role in developing the protocol; six U.S. senators also participated in the drafting, including Joe Lieberman (D-CT).<sup>11</sup> As a result of the Byrd-Hagel Resolution, however, the Clinton Administration signs the protocol but never submits it to the Senate for ratification. The U.S. has not joined the Kyoto Protocol, substantially undermining its impact and global appeal.

### **1999-2002:**

- During the 106<sup>th</sup> and 107<sup>th</sup> Congresses, multiple climate bills are introduced, largely focused on voluntary emissions reductions and credits for early emission cuts.<sup>12</sup> Most notably, in the 107<sup>th</sup> Congress the Senate Environment and Public Works Committee reports out the Clean Power Act, S. 556, sponsored by Senator James Jeffords (I-VT); the bill requires reductions of CO<sub>2</sub>, SO<sub>2</sub>, NO<sub>x</sub>, and mercury emissions from electric power plants and the reduction of CO<sub>2</sub> emissions to 1990 levels by 2008.<sup>13</sup> Senator Patrick Leahy (D-VT) also proposes a number of climate bills.<sup>14</sup> No votes in the Senate or the House are taken.

### **2003-2004:**

- The Environmental Defense Fund (EDF), the Natural Resources Defense Council (NRDC), and other environmental organizations begin working on climate legislation with John McCain (R-AZ), who quickly takes a leadership position on the issue.<sup>15</sup> During the 108<sup>th</sup> Congress, five major emissions-reduction bills are introduced (two in the House and three in the Senate).<sup>16</sup> McCain and Lieberman co-sponsor one of those bills, the Climate Stewardship Act (S. 139), which is defeated 43-55.<sup>17</sup>

#### **2005-2006:**

- Multiple climate bills are again proposed during the 109<sup>th</sup> Congress. During a floor debate on the Energy Policy Act of 2005, two amendments are proposed and voted upon. Senator Chuck Hagel (R-NE) proposes Amendment 817, instructing the energy secretary to create a national climate strategy and to encourage emissions reduction; it does not include any power to enforce binding emissions reductions. Hagel's amendment passes 66 to 29.<sup>18</sup> Lieberman and McCain propose Amendment 826, the Climate Stewardship and Innovation Act, which would have established a national cap-and-trade regime. It fails on a vote of 38-60.<sup>19</sup>
- EDF, NRDC, the World Resources Institute (WRI), and the Pew Environment Group begin discussions with a few large corporations – most notably General Electric (GE) – about climate legislation. These early discussions are the basis for what eventually emerges as the U.S. Climate Action Partnership (USCAP).<sup>20</sup>

#### **2007-2008:**

- The Green Group, an informal coalition of two dozen of the largest environmental organizations, come to allies in Congress to present a unified policy agenda focused on passing a mandatory greenhouse emissions cap.<sup>21</sup>
- The U.S. Climate Action Partnership publicly launches itself with a *Call to Action*,<sup>22</sup> a report on consensus principles and recommendations on climate policy. Partners include Alcoa, BP America, Caterpillar, Duke Energy, DuPont, FPL Group, GE, Lehman Brothers, PG&E, and PNM Resources, as well as EDF, NRDC, Pew, and WRI.<sup>23</sup>
- In an appearance on 60 Minutes, Al Gore launches what he describes as a three-year, \$300 million “advertising blitz” to seek action on climate change.<sup>24</sup> The campaign, run by Gore's Alliance for Climate Protection, will eventually spend closer to \$115 million.<sup>25</sup>
- The 110<sup>th</sup> Congress sees a large increase in climate-related activity.<sup>26</sup> Many bills are proposed, though none come to a vote. McCain and Lieberman again propose the Climate Stewardship and Innovation Act. Other legislators begin to establish a track record on climate, including Barbara Boxer (C-CA) and John Kerry (D-

MA). As senator, Barack Obama (D-IL) sponsors or co-sponsors three important climate bills.<sup>27</sup> In the House, meanwhile, Representatives John Dingell (D-MI) and Rick Boucher (D-VA) introduce their own draft bill.<sup>28</sup> Expectations for the future of the legislative process are high.<sup>29</sup>

- In November 2008, Obama is elected president after his campaign heavily emphasizes climate change and energy as one of his top one or two priorities.<sup>30</sup>
- On Tuesday, December 16, Obama announces his energy and climate change team. It includes Dr. Steven Chu, secretary of energy; Lisa Jackson, Environmental Protection Agency administrator; Nancy Sutley, chair of the White House Council on Environmental Quality; and Carol Browner, assistant to the president for energy and climate change (the “climate czar”).<sup>31</sup>
- In the closing days of the 110<sup>th</sup> Congress, Henry Waxman (D-CA) ousts John Dingell from the chairmanship of the House Energy and Commerce Committee, seizing control of the most critical House committee for energy legislation.<sup>32</sup> Waxman is more liberal than Dingell on environmental issues and had previously championed climate policy.

#### **2009-2010:**

- On January 14, Obama meets with Democratic senators. At some point between his election and this meeting, he decided that health care, not climate and energy, would be his top domestic priority after dealing with the recession, and he tells the senators that climate legislation should be delayed.<sup>33</sup>
- Upon his inauguration on January 20, Obama instructs his White House team to focus on passing health care in his first year in office<sup>34</sup> and asks Representative Waxman to focus on health first, about which he “cares more.”<sup>35</sup>
- In the wake of the disappointing results in the 110<sup>th</sup> Congress, USCAP had decided to pursue a more aggressive strategy by itself drafting recommendations.<sup>36</sup> Accordingly, in January 2009, USCAP releases its *Blueprint for Legislative Action*, a detailed proposal designed to help guide policy makers as they formulated legislation.<sup>37</sup>
- In February 2009, John McCain pulls out of internal Senate negotiations with John Kerry on a potential co-sponsored climate bill, citing pressure from a Republican primary opponent.<sup>38</sup>
- On March 31, 2009, Henry Waxman, with Ed Markey (D-MA), unveils a draft of climate legislation and publicly recognizes its debt to the USCAP *Blueprint*. He begins formal testimony on April 22 and brings it to a vote on June 26. The bill passes that day on a vote of 219-212, to the surprise of political commentators and the White House.<sup>39</sup> Forty-four Democrats voted against the bill; eight Republicans

voted for it.<sup>40</sup> Democratic senators indicate no intention to push climate up in their list of priorities.<sup>41</sup>

- The House passage of Waxman-Markey occasions substantial political fallout; House Democrats who voted for the bill are criticized in town hall meetings, while the conservative press attacks the bill.<sup>42</sup> Anti-climate organizations step up their attacks on the bill, framing the debate in terms of jobs and the economy.<sup>43</sup>
- In response, the environmental community organizes Clean Energy Works, a coordinated campaign among 50 environmental groups to push for a Senate climate bill. CEW is run by veteran political campaigner Paul Tewes and is organized around constituency groups like labor, corporations, and veterans.<sup>44</sup>
- On October 11, Senators Kerry and Lindsey Graham (R-SC) jointly publish an op-ed in the *New York Times*, “Yes We Can (Pass Climate Change Legislation),”<sup>45</sup> which breathes new life into Senate climate efforts.<sup>46</sup> Concerned that the bill remain centrist, Graham asks Senator Lieberman to join the leadership team.<sup>47</sup>
- On November 5, 2009, the Senate Environment and Public Works Committee reports out S. 1733, the Clean Energy Jobs and American Power Act, under the leadership of Chairwoman Boxer. Republican members of the committee boycott markup sessions,<sup>48</sup> and the bill is declared politically dead on arrival.<sup>49</sup>
- In late November, Senate Majority Leader Harry Reid (D-NV) announces that climate legislation will be picked back up in the spring; attention turns to Senators Kerry, Graham, and Lieberman.<sup>50</sup>
- Recognizing that a number of Democratic senators would inevitably oppose climate legislation, Kerry, Graham, and Lieberman spend January- March 2010 attempting to attract Republican supporters, such as Senators Susan Collins (R-ME) and Olympia Snowe (R-ME). They are unable to secure firm commitments.
- On April 21, 2010, Harry Reid announced that he would prioritize immigration legislation over climate change.<sup>51</sup> A few days later, Graham pulls out of the partnership with Kerry and Lieberman, citing the decision by Reid to pursue immigration over energy. Other reports suggest that the real reason for Graham’s withdrawal was fear about the political fallout from a bill that could be framed as a gas tax.<sup>52</sup>
- On July 22, 2010 Reid announces that he is abandoning plans to advance a comprehensive climate change bill, killing the chances for passage during the 111<sup>th</sup> Congress.<sup>53</sup>

## **Part 2: Why Did Climate Legislation Fail?**

### **A. Introduction**

It is not easy making public policy in the United States. Our political system was designed to be conservative, with multiple blockage points for any major legislation. In the 111<sup>th</sup> Congress, the structural and institutional barriers were reinforced by four elements. First, by 2009, political polarization had driven the Republicans and Democrats almost completely apart, leaving virtually no space for political compromise. Second, the distribution of natural resources in this country creates a complex political geography of energy that discourages action on climate and aggravates legislative gridlock. Meanwhile, the energy industry, especially the oil, coal, and electric utility components, wields substantial power in Washington and strongly resists any policies that promise to undermine its economic position; it was firm in opposition to climate legislation and deployed substantial resources to block it. Finally, the recession of 2009 further pushed down the perceived urgency of climate change among the American public, reinforced the arguments of business against climate legislation, and changed the priorities of lawmakers.

We can consider the operation of these factors at either the aggregate level – i.e. the Congress as a whole – or for individual officials. At the individual level, elected officials weigh a host of factors when making political decisions, including the position of the party and party leadership, their own political ideology, their state's interests, the demands of relevant interest groups, and the position of their constituents. As political science research suggests, we can expect that elected officials will weigh these factors with an eye toward maintaining office. Surveying the political landscape of climate, then,



we can assume that many elected officials saw opposition to climate, or at least passivity on the issue, as the winning strategy. In other words, the combination of political polarization, the political geography of energy, the power of the energy industry, and the recession – topics that the paper below examines in turn – created a political calculus in which the costs of support for climate outweighed the benefits. It was the burden of the environmental movement to create political forces such that support for climate was the politically wise calculation. It is a testament to the work of environmentalists, especially the organizations that formed the US Climate Action Partnership, that a bill made it successfully through the House of Representatives despite these tremendous barriers. This paper, however, is concerned not with why a bill did pass in the House – a story worth telling and an accomplishment worth explaining – but why it failed to pass in the Senate.

### ***Contrasting the House and the Senate***

Both houses of Congress have complex committee structures that decentralize political power and create internal barriers to lawmaking.<sup>54</sup> But though the two bodies share a common political culture, they diverge in many important respects. It is important to reinforce at the outset the differences between the House and Senate on climate issues, differences so obvious that they are often overlooked or underappreciated. Because of the use of the filibuster in the Senate, which has increased dramatically over the last few decades,<sup>55</sup> passing controversial legislation nearly always require a super-majority.<sup>56</sup> Waxman-Markey passed the House with 50.8% of the vote; in the Senate it would have required 60%. At the same time, the Senate gives far greater weight to individual states

than the House. Twenty-five percent of the affirmative votes in the House on Waxman-Markey came from New York and California, which as just two states would represent only 4% of the vote in the Senate.<sup>57</sup>

The remainder of this essay focuses on the Senate because that's where climate legislation died -- and because that's where the most important future constraints lie. Again, it must be noted that the accomplishments of the US Climate Action Partnership in the House of Representatives are noteworthy. And yet whatever strategies succeeded in the House were ultimately found wanting in the Senate.

### **B. Partisanship and Political Polarization**

*“The failure of cap-and-trade climate policy in the Senate in 2010 was collateral damage in a much larger political war”*

— Robert Stavins, professor, Harvard University

Perhaps the most important factor shaping climate debate in the 111<sup>th</sup> Congress was political polarization. As journalistic accounts noted, Republican opposition to climate change was fierce. The same Republicans who had previously served as more moderate voices on the issue – senators like John McCain and Richard Lugar (R-IN) – were firmly opposed to legislation by the 111<sup>th</sup> Congress.

Republican opposition to environmental issues has not always been so staunch. In fact, over the past half-century, Republican presidents, responding to pressure from environmental groups, have been responsible for much of the most important environmental policy. By some counts, up to 70% of the most important environmental laws since 1960 were passed with Republicans in the White House.<sup>58</sup> Nixon, for example,

signed into law the 1970 Clean Air Act Amendments, the National Environmental Policy Act, and the Endangered Species Act, among others, while even Reagan was responsible for important extensions of environmental protections.<sup>59</sup> The first Bush joined their ranks by passing a cap-and-trade bill to control sulfur emissions.<sup>60</sup>

Early efforts to pass a cap-and-trade bill for carbon also found some support among conservatives. For example, on the Lieberman-McCain Climate Stewardship Act of 2003, the Senate votes by party were:<sup>61</sup>

|            | <b>Democrat</b> | <b>Republican</b> |
|------------|-----------------|-------------------|
| <b>Yes</b> | 37              | 6                 |
| <b>No</b>  | 10              | 45                |

In other words, nearly 25% of Democrats voted against the bill, and almost 20% of Republicans voted for it. Approximately 14% of votes for the bill were from Republicans. A similar vote pattern emerged in the 2005 vote on the McCain-Lieberman Climate Stewardship and Innovation Act:<sup>62</sup>

|            | <b>Democrat</b> | <b>Republican</b> |
|------------|-----------------|-------------------|
| <b>Yes</b> | 32              | 6                 |
| <b>No</b>  | 11              | 49                |

Here, a higher percentage of the vote came from Republicans. While these numbers are still relatively low, they suggest that at least in the early 2000s there was legitimate hope for climate bipartisanship. Such partisanship was considered critical for success; in fact, cap-and-trade had been originally designed exactly to appeal to Republicans.<sup>63</sup>

By 2009, however, Republicans were vehemently opposed to climate legislation. Not a single Republican senator was ultimately willing to support a climate bill. In the

House, only eight Republicans voted for passage of the Waxman-Markey bill.<sup>64</sup> What happened between 2005 and 2009 to drive the Republicans so far away from climate policy? There are at least three trends responsible.

### ***General Political Polarization***

The United States has experienced a long-term trend toward political polarization. Some political scientists trace its origins to shifts in the organization and balance of power within political parties, which transferred control of candidate selection to party caucuses and direct primaries, in essence “knighting political activists.”<sup>65</sup> Other scholars, noting that people increasingly live among like-minded people and get their news from ideologically driven publications, argue that the public is itself becoming more polarized and driving the political polarization.<sup>66</sup> Whatever the cause, there is evidence that the two major parties have grown increasingly divided over the last few decades. *Congressional Quarterly* ranked 2009 as the most partisan year in U.S. history up until that time.<sup>67</sup> Partisanship is particularly strong in the Senate. As National Public Radio reported in 2010, partisan roll call votes accounted for “a whopping 72 percent [of total votes] – the highest percentage of partisan votes ever tallied in that chamber.”<sup>68</sup>

### ***Politicization of Climate***

Not all political issues fall neatly into the partisan opposition model, however; there are consensus positions on many areas of foreign policy, crime, drug enforcement, and national defense. When the environmental movement first began to focus on climate change and it began penetrating national consciousness, there was a possibility that the

issue could avoid polarization. After all, the environmental movement had enjoyed bipartisan appeal for decades. And indeed, as a number of environmental activists and policy makers suggested in interviews, the scientific consensus and sheer urgency of the issue helped climate appeal to otherwise quite conservative lawmakers, for a time. Elizabeth Thompson, head of EDF's lobbying efforts, reflected on her own experiences: "the climate science was so conclusive" she noted, that environmentalists often felt they were in "a realm where, despite the uncertainty of the outcome, there was a problem that clearly had to be addressed."

As a senior leader at the EPA noted during an interview, however, in the environmental arena as in others "political conflict is a universal solvent." The climate movement posed a threat to both major industries and the neoliberal movement and, early in the 1990s, a "coordinated anti-environmental countermovement, spearheaded by conservative foundations, think tanks, and politicians, emerged in response" to the new threat of climate policy. Unlike issues like crime or national defense, on climate there were positions that appealed to two clearly distinct and powerful constituencies with opposite interests: environmentalists wanted action that demanded curbs on industry to protect the climate, while industry wanted inaction to protect the status quo. Building on a historical allegiance between business interests and the GOP, the new class of Republicans who entered Congress in the 1994 Republican Revolution joined the anti-climate side. At the same time, carbon industries, especially oil, began attacking the science of global warming, developing their own quasi-scientific apparatus to present alternative narratives, just as other industries had historically attacked scientific threats to the use of lead, asbestos, and pesticides. Since 2000 the trend of polarization on

climate has accelerated. Today, the polarization of political elites has affected the American public more broadly; as research by Professor Dan Kahan has shown, Americans today interpret the very science of climate policy based on their political positions.

Although a full discussion of the topic is outside the scope of this article, there is good reason to believe that polarization among elites as well as the general public is a direct result of the interventions of energy interests in public debate and, in particular, their efforts to attack the authority of scientists and scientific research.<sup>69</sup>

### ***Obama, the Recession and the Tea Party***

Despite the trends toward political polarization and the extreme politicization of climate, a number of Republican senators were supportive of action on climate change as late as 2003 and 2005.<sup>70</sup> The shift away from limited bipartisanship can be attributed most directly to the election of President Obama. The Republican Party in the Senate, led by Mitch McConnell (R-KY), adopted a strategy of absolute opposition to all of Obama's initiatives.<sup>71</sup> In health care, for example, despite overtures from Obama and Democratic leaders, Senate members of the GOP refused to support any compromise position. Similarly, McConnell strongly discouraged his members from finding any common ground with Senate Democrats on climate change.<sup>72</sup>

But McConnell's prodding only reinforced good political reasons for the Senate Republicans to oppose climate change policy – in particular, the politics of Republican primaries.<sup>73</sup> The combination of Obama's election and the economic recession had helped

drive the Republican base to the right and sparked the Tea Party movement,<sup>74</sup> which strongly opposed the climate bill.<sup>75</sup> As the *New York Times* noted, “climate change doubt is [a] Tea Party article of faith.”<sup>76</sup> That opposition itself, of course, was the result of the polarization of climate as a political issue, and in turn helped to reinforce partisan lines.<sup>77</sup> As time would prove, Republican senators who opposed climate change legislation in fear of Tea Party reactions were wise to do so, at least from a reelection perspective; Senator Lugar, who voted for climate legislation in 2003 and 2005, was defeated in a Republican primary in May 2012 in part because of his track record on environmental issues.<sup>78</sup>

Party was not definitive, however. Eight Republicans from six states voted for climate legislation in the House. Moreover, two Republican senators, Collins of Maine and Mark Kirk of Illinois, co-sponsored climate legislation during the 111<sup>th</sup> Congress. Greater home state support for climate legislation might have shifted other Republican senators or encouraged Kirk or Collins to cooperate with Democrats.

### ***Polarization and the Filibuster***

Though a full discussion of the filibuster is outside the constraints of this treatment, it is important to emphasize impact of the structure of the Senate on lawmaking. Polarization and political geography have such a large impact only because of the 60-vote, filibuster-imposed threshold on passing nearly all legislation; dropping that threshold to 51 would have completely changed the political dynamics and greatly enhanced the probability of victory. That is, the filibuster can either be understood as

simply part of the basic political conditions under which the climate movement operated or as the single most important cause of the climate bill's defeat.<sup>79</sup>

### **C. The Political Geography of Energy**

*“When energy and environmental issues are at stake, regional differences can dominate partisan ones.”*

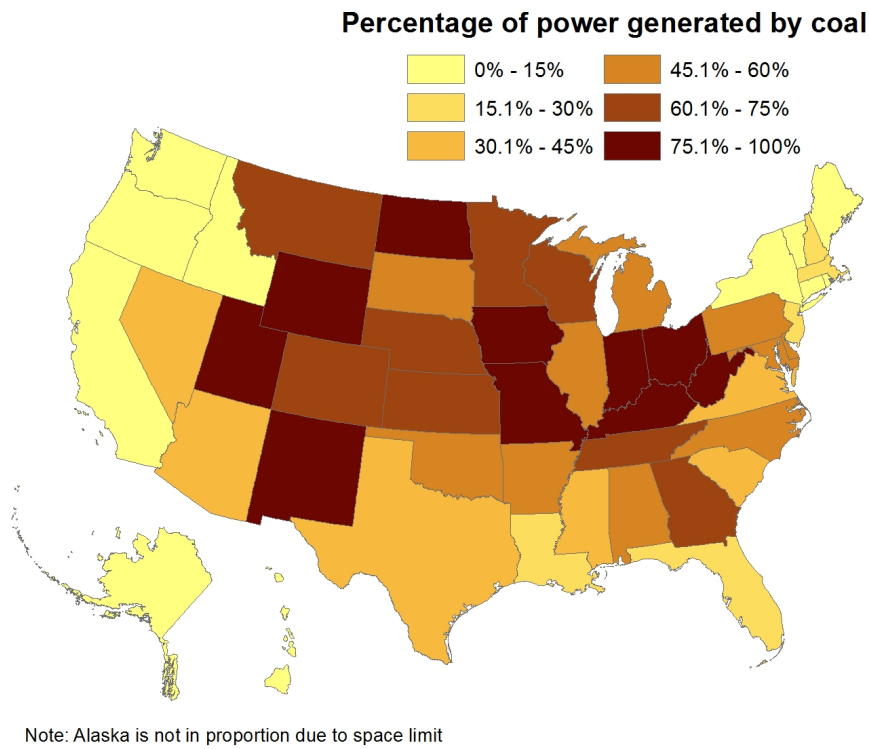
— Michael Graetz, professor, Columbia University<sup>80</sup>

The filibuster is not the only element of Senate design that plays into climate policy. Because the Senate apportions representation by state rather than by population, it lends political weight to the unequal natural endowments of the 50 states. In the context of climate policy, geography plays a role to the extent that it dictates the use of carbon-based fuels and their production.<sup>81</sup> Those states more dependent on carbon fuels – carbon states for short – are disproportionately burdened by a price on carbon or a reduction in demand for carbon fuels. These geographic considerations reinforced the opposition of many carbon-state Republicans and provided grounds on which carbon-state Democrats could reasonably question cap-and-trade – or stand against it all together.<sup>82</sup>

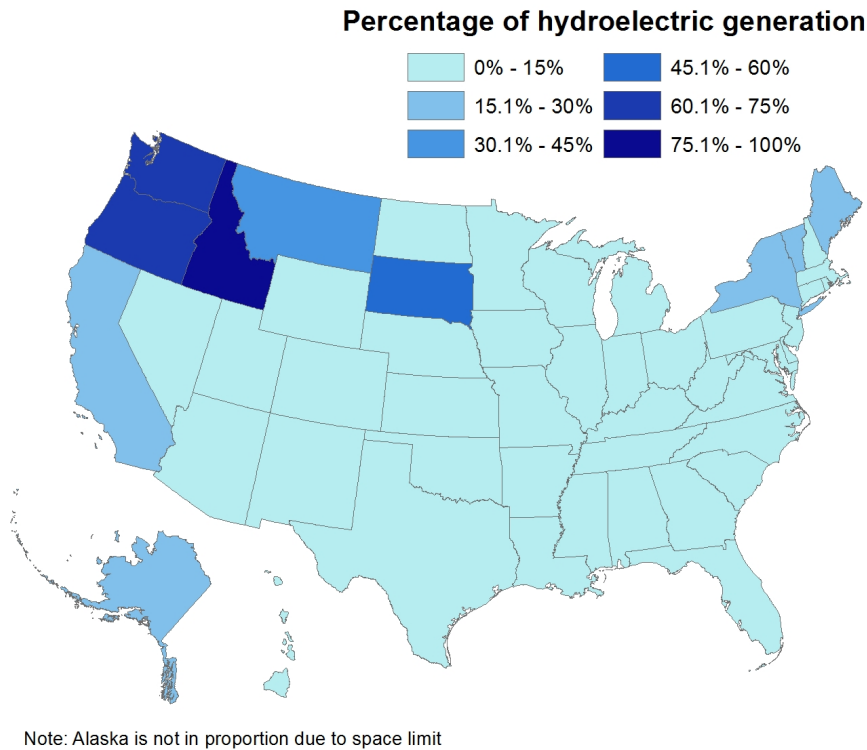
### ***Energy Usage***

The first way that geography influences voting is through the differing energy usage by state. The Northwest, for example, draws a substantial percentage of its energy from hydroelectric dams; an increase in the price of coal-based electricity would have virtually no effect on them. On the other hand, the Midwest is highly dependent on coal-based electricity. The maps below, taken from an interactive website designed by National Public Radio, show the relative distribution of hydro, coal, and nuclear energy:<sup>83</sup>

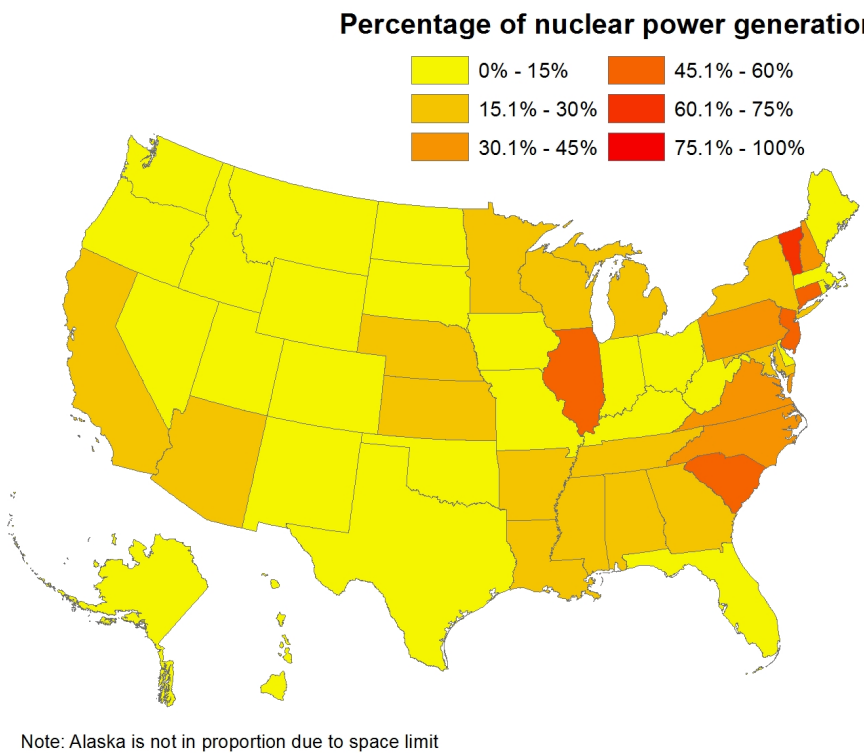




*Figure 1: Coal-powered electricity in the U.S.*<sup>84</sup>



*Figure 2: Hydroelectric power in the U.S.<sup>85</sup>*



*Figure 3: Nuclear-powered electricity in the U.S.<sup>86</sup>*

Indiana, for example, derives 94% of its electricity from coal.<sup>87</sup> Perhaps as a result, Evan Bayh, a Democratic senator from Indiana, was dubious about a cap-and-trade program in the 111<sup>th</sup> Congress, when energy prices had become more salient for voters.<sup>88</sup> In his article in the *New Yorker*, Lizza describes a map of energy production (like the ones above) that Evan Bayh had been given by a lobbyist. “Every time Senator Lieberman would open his mouth” during the Senate negotiations, Lizza reports, “Bayh would show him the map.”<sup>89</sup>

A review of voting records on climate legislation since 2000 shows the influence of energy usage on climate change support. Take the Lieberman-McCain Climate Stewardship Act (S. 139) in the 108<sup>th</sup> Congress.<sup>90</sup> The table below details votes for S. 139 by state, highlighting those states with two-thirds or greater dependence on coal-generated electricity.

| State         | Percentage of electricity generated by coal | Number of senators voting for S. 139 |
|---------------|---|--------------------------------------|
| Colorado      | 72%   | 0                                    |
| Iowa          | 77%   | 1                                    |
| Indiana       | 94%   | 2                                    |
| Kansas        | 75%   | 0                                    |
| Kentucky      | 91%   | 0                                    |
| Missouri      | 85%   | 0                                    |
| North Dakota  | 95%   | 0                                    |
| New Mexico    | 85%   | 1                                    |
| Ohio          | 87%   | 0                                    |
| Utah          | 94%   | 0                                    |
| West Virginia | 98%   | 1                                    |
| Wisconsin     | 67%   | 2                                    |
| Wyoming       | 95%   | 0                                    |

*Figure 4: States with over two-thirds dependence for electricity on coal, and state’s U.S. senators voting for Lieberman-McCain Climate Stewardship Act<sup>91</sup>*

While there are exceptions – Indiana and Wisconsin, for example, supported climate legislation in the 108<sup>th</sup> Congress – the numbers suggest that geography does

influence climate politics; the likelihood of a random voting distribution generating these numbers is extremely low. Moreover, as noted above, some of these senators who supported legislation in the 108<sup>th</sup> Congress – like Evan Bayh – later opposed legislation in the 111<sup>th</sup> Congress when energy prices became more salient to consumers.

### ***Carbon Fuel Production***

In addition to differences in the sources of electricity, U.S. political geography is shaped by the physical production of energy, especially coal mining, oil drilling, and natural gas extraction – industries to which climate legislation potentially posed a serious threat. As the tables below highlight, only three senators from the top 10 energy-producing states voted for the climate bill in the 108<sup>th</sup> Congress; only one of the senators from the top five coal-producing states did so.

| <b><u>State</u></b> | <b><u>Percent of total<br/>U.S. coal<br/>production</u></b> | <b><u>Number of senators<br/>voting for S. 139</u></b> |
|---------------------|---|--|
| Wyoming             | 41%   | 0  |
| West Virginia       | 13%   | 1  |
| Kentucky            | 10%   | 0  |
| Pennsylvania        | 5%  | 0  |
| Montana             | 4.1%  | 0  |

*Figure 5: Top coal-producing states, and state's U.S. senators voting for Lieberman-McCain Climate Stewardship Act<sup>92</sup>*

| <b>Top States by Total Energy Production</b> |                               |   |
|--|-------------------------------|---|
| <b>State</b>                                 | <b>Trillions of BTUs/year</b> | <b>Number of senators voting for S. 139</b> |
| 1 Texas                                      | 11,915                        | 0   |
| 2 Wyoming                                    | 10,337                        | 0   |
| 3 Louisiana                                  | 7,302                         | 0   |
| 4 West Virginia                              | 3,727                         | 1   |
| 5 Kentucky                                   | 2,819                         | 0   |
| 6 Pennsylvania                               | 2,674                         | 0   |
| 7 California                                 | 2,605                         | 2   |
| 8 Oklahoma                                   | 2,571                         | 0   |
| 9 Colorado                                   | 2,483                         | 0   |
| 10 New Mexico                                | 2,412                         | 1   |

*Figure 6: Top states by total energy production, and state's U.S. senators voting for Lieberman-McCain Climate Stewardship Act<sup>93</sup>*

Similar voting patterns emerged in the 109<sup>th</sup> Congress in the vote for the McCain-Lieberman Climate Stewardship and Innovation Act (S. Amdt. 826),<sup>94</sup> and in the patterns of sponsorship of climate bills in the 110<sup>th</sup><sup>95</sup> and 111<sup>th</sup> Congresses. See Appendices 3, 4, and 5.

### ***The Relationship of Party and Carbon Dependence***

The tables above do not identify votes by party, however; for example, both senators from Texas during the 108<sup>th</sup> Congress were Republicans and might have opposed cap-and-trade regardless of their state's energy dependence. To more narrowly examine the impact of energy dependence, the table below identifies those Republicans who voted *for* the climate legislation in the 108<sup>th</sup> and 109<sup>th</sup> Congresses or who sponsored or co-sponsored legislation in the 110<sup>th</sup> or 111<sup>th</sup> Congresses (in which no votes on climate legislation were taken):

| <b>Senator</b> | <b>State</b> |  |
|----------------|--------------|--|
|----------------|--------------|--|

|                |    |            |
|----------------|----|------------|
| John McCain    | AZ | Republican |
| Richard Lugar  | IN | Republican |
| Susan Collins  | ME | Republican |
| Olympia Snowe  | ME | Republican |
| Judd Gregg     | NH | Republican |
| Lincoln Chafee | RI | Republican |
| Norm Coleman   | MN | Republican |
| Liddy Dole     | NC | Republican |
| John Warner    | VA | Republican |
| Mark Kirk      | IL | Republican |

*Figure 7: Republican senators supportive of climate legislation in the 108-111<sup>th</sup> Congresses*

Of these 10 Republican senators, only Richard Lugar of Indiana came from a state with any major dependence on carbon fuels as a productive commodity or source of electricity.

Similarly, we can examine Democratic senators who voted against climate legislation in the 108<sup>th</sup> and 109<sup>th</sup> Congresses and did not co-sponsor any climate legislation in the 110<sup>th</sup> and 111<sup>th</sup> Congresses.

| <b>Senator</b> | <b>State</b> | <b>Party</b> |
|----------------|--------------|--------------|
| Mark Pryor     | AR           | Democrat     |
| Mary Landrieu  | LA           | Democrat     |
| Carl Levin     | MI           | Democrat     |
| Max Baucus     | MT           | Democrat     |
| Kent Conrad    | ND           | Democrat     |
| Byron Dorgan   | ND           | Democrat     |
| Robert Byrd    | WV           | Democrat     |
| Ben Nelson     | NE           | Democrat     |

*Figure 8: Democratic senators unsupportive of climate legislation in the 108-111<sup>th</sup> Congresses<sup>96</sup>*

Of these eight, five came from carbon states – Max Baucus from Montana, Kent Conrad from North Dakota, Byron Dorgan from North Dakota, Robert Byrd from West Virginia, and Mary Landrieu from Louisiana.

Other studies of the impact of carbon use on voting behavior reinforce these conclusions. In one well-regarded study, Michael Cragg and Matthew Kahn showed that overall carbon emissions (based on the electric utility, commercial, mobile, residential, and industrial sectors) could help predict congressional voting patterns on climate legislation.<sup>97</sup> Nor are formal studies strictly necessary. After the failure of the Boxer climate bill in the 110<sup>th</sup> Congress, Senator Debbie Stabenow of Michigan formed the “Group of 10,” composed of Democratic Senators from coal-dependent states. The goal, she told the *New York Times*, was to make sure that the Senate came up with “policy that makes sense, that is manageable on the cost end, that creates new technology — and that treats states equitably and addresses regional differences.”<sup>98</sup>

### ***Conclusion***

Political polarization provides good reasons for Republicans to oppose climate legislation. The political geography of energy reinforced Republican opposition and also encouraged some Democrats to resist legislation. The distribution of carbon fuel use and production makes the representatives of some states, such as like West Virginia and Wyoming, for example, which are highly dependent on coal production, quite unlikely to support climate legislation under any conditions. It makes representatives of other states unwilling to support legislation without substantial concessions. Henry Waxman’s negotiations in the House, for example, were largely focused on wooing coal-state Democrats<sup>99</sup> through large handouts and subsidies to their industries.<sup>100</sup> Likewise in the Senate, negotiations were widely understood to be dependent on appeasing coal-state senators.<sup>101</sup>

In previous Congresses, the incentives created by geography and party lines to oppose climate legislation had intersected – geography had hindered legislation in general but also helped by creating incentives for Republicans to break from party formation. As political polarization increased, however, geography had less impact on Republicans but still served to increase opposition among Democrats.

### **C. Energy Interests**

*“The power of the special interests is almost unbelievable.”*  
– President Jimmy Carter, in his diary, discussing the energy sector

The campaign for climate legislation was not the first time that reformers tried to reshape national energy policy.<sup>102</sup> Since at least the Carter administration, Democratic presidents have been trying to build a more sustainable and efficient energy system. Like Clinton’s BTU tax, cap-and-trade would have begun pricing the externalities associated with energy production, accelerating a still gradual shift away from carbon fuels toward more sustainable energy sources. Those with the most vested in the current energy economy – in particular, various carbon-based industries – correctly understood the BTU and cap-and-trade campaigns as direct attacks on their long-term economic well-being. They therefore met proposed legislation with fierce opposition, creating strong incentives for elected officials to follow energy-friendly policy prescriptions.\*

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\* It can be difficult to define the exact contours of the energy sector. To avoid debate over those lines, the sections that follow narrow in on three industries that are uncontroversially part of the energy sector: coal mining, oil production, and electric utilities. It refers to other industries sparingly.



To understand the power of the energy industry, we must begin with the history of energy policy making. The power of energy interests runs through long-established relationships with policy makers in Congress and in executive agencies and through deep institutional relationships with the Republican Party. This history undergirds ongoing, stable relationships with policy makers from carbon states and from states with related industries like auto manufacturing. Energy interests employ extensive lobbying budgets, political donations, and public relations campaigns to maintain support from allied legislators and encourage their industry-friendly stances.

During the 111<sup>th</sup> Congress, these powers both reinforced opposition among many senators and convinced some elected officials who would have otherwise been for action on climate to stay neutral or oppose it. In this way, the energy sector built on the influence of political polarization and political geography to create an additional set of barriers to reform.

### ***Energy Interests and the Republicans***

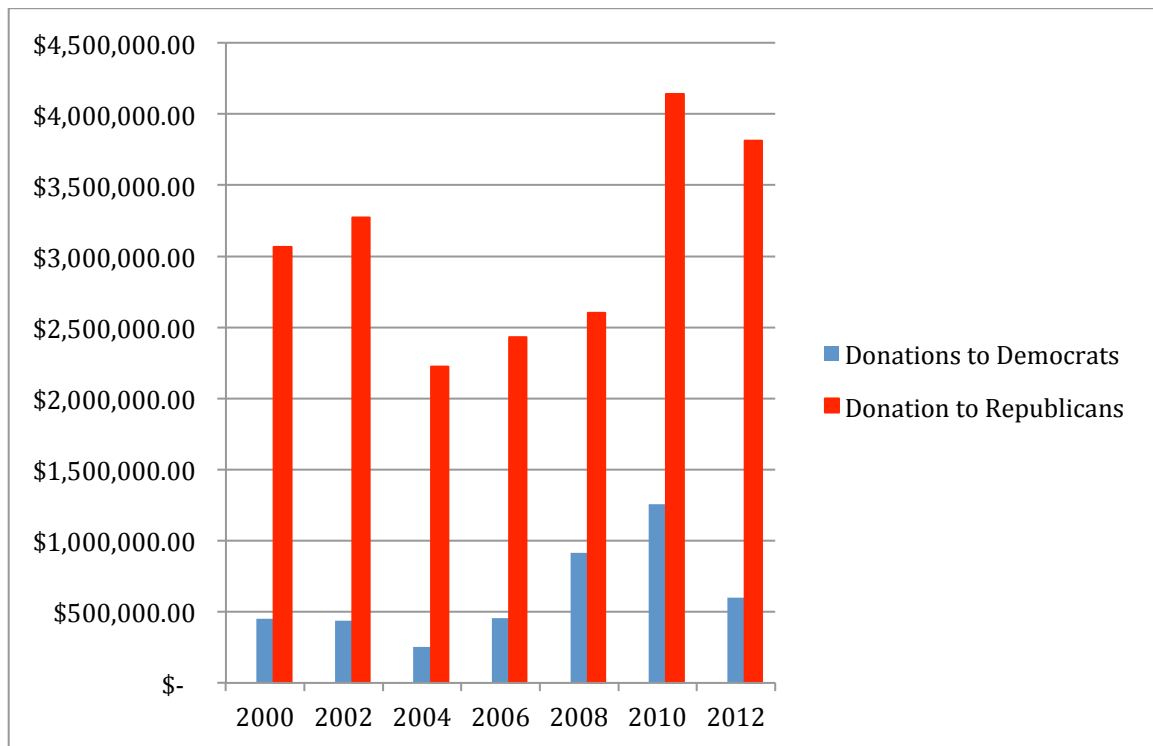
For the first half of the 20th century, there were no energy politics as such. Rather, there were sets of policy issues related to specific energy sources. Coal, for example, generated concerns about labor wages and safety issues. Oil producers negotiated with the government over regulations related to price. Each fuel had a different set of priorities.<sup>103</sup> Nor were there substantial conflicts, as government and fuel producers had reconcilable goals. As John Chubb, an expert on the history of energy policy, has noted, producers wanted a stable policy regime and profits, and the government wanted a supply of reasonably cheap energy to encourage economic

growth.<sup>104</sup> Over time, producers came to dominate the policy “subsystems” in which they operated, until such domination “became the firmly established mode of energy policy making.”<sup>105</sup> This is a classic example of government “capture,” a term used by political scientists to describe how industries come to wield influence over the very agencies or departments designed to regulate them.<sup>106</sup>

Starting in the late 1960s, and especially in the 1970s, these stable policy making subsystems came under pressure. With growing environmental critiques of the use of fossil fuels, the increasing challenge of securing global oil supplies, and a growing recognition of the need for a long-term strategy for alternative and renewable fuels, a new set of value and economic conflicts came to the forefront.<sup>107</sup> Coal and oil could no longer hold themselves out as unvarnished goods. From that time forward, the energy industry has politically consolidated itself, strengthening organizations like the American Petroleum Institute (oil and natural gas), the Edison Electric Institute (electric utilities), and the National Mining Association (coal) to protect shared interests. Over the same time period, the industry has worked to maintain its dominant policy-making position by building influence and cultivating long-term relationships with key actors in the legislative and executive branches. These efforts have been largely successful. As Michael Graetz puts it, by the turn of the 21st century, the “energy establishment...was becoming a virtually irresistible political force.”<sup>108</sup>

With conflict also came the opportunity for political parties to take sides. Much of the force of the energy industry today is derived from a strong relationship with the GOP. As discussed above, the energy industry, building on historic ties, was easily able to recruit Republicans to their anti-climate cause in the early 1990s. Conservatives have

been a steady source of political support ever since. Figure 9 shows the lopsided support of the energy industry for Republicans.



*Figure 9: Political donations by the coal mining industry, 2000 to 2012.*

The Bush administration embodied the reciprocal relationships between energy interests and the GOP; as Micah Sifry and Nancy Watzman point out, the Bush administration's energy planning process, which Vice President Dick Cheney (a former CEO of oil field services company Halliburton) chaired, was essentially a series of meetings with energy executives; environmentalists were almost completely ignored.<sup>109</sup> At the same time, the close ties between the energy sector and the administration helped reinforce industry's hold over policy making.

### ***Natural Alliances and Lobbying***

While the energy interests exert influence through the Republican establishment as a whole, they also benefit from the natural allegiances of representatives of carbon states irrespective of party. Every elected official whose constituents depend on coal, for example, has a reason to ally with the National Mining Association or with the Edison Electric Institute on certain issues – especially when constituents’ jobs depend on energy production. As John Kingdon observes, “every area has its important industry, and every Congressman is expected as a matter of course to defend these interests.”<sup>110</sup> Protecting jobs in the home district is a very important priority for most congressmen.<sup>111</sup>

In analyzing the debates over climate legislation, significant attention has been paid to the lobbying budgets of both those in favor of and opposed to action.<sup>112</sup> Such attention is merited, but not for the reasons usually put forward. While lobbying tends to be associated with undue influence, most lobbying targets elected officials who already agree with the position of the entity represented by the lobbyists.<sup>113</sup> Their influence derives from “developing expertise about politics and policy and strategically sharing this expertise.”<sup>114</sup> One important paper on the topic by Richard Hall and Alan Deardorff describes this kind of influence as a “legislative subsidy,” “a matching grant of policy information, political intelligence, and legislative labor to the enterprises of strategically selected legislators”:

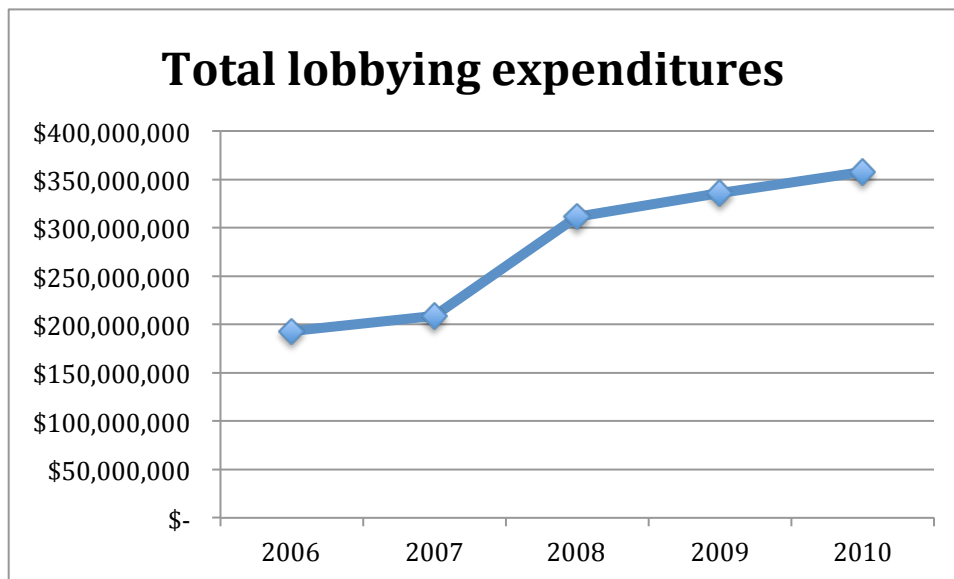
The proximate objective of this strategy is *not* to change legislators’ minds but to assist natural allies in achieving their own, coincident objectives. Their budget constraint thus relaxed by lobbyists’ assistance, already likeminded legislators act *as if* they were working on behalf of the group when in fact they are working on behalf of themselves.<sup>115</sup>

Figure 10 shows sample lobbying budgets (which include expenditures by both individual corporations and the relevant industry associations). Figure 11 illustrates the rise in these expenditures.

|             | <b>Oil and gas</b> | <b>Coal mining</b> | <b>Electric utilities</b> | <b>Total</b>  |
|-------------|--------------------|--------------------|---------------------------|---------------|
| <b>2006</b> | \$74,887,623       | \$7,387,791        | \$110,816,835             | \$193,092,249 |
| <b>2007</b> | \$84,555,985       | \$11,323,700       | \$112,939,266             | \$208,818,951 |
| <b>2008</b> | \$134,545,402      | \$16,735,938       | \$159,928,986             | \$311,210,326 |
| <b>2009</b> | \$175,454,820      | \$15,015,611       | \$145,126,753             | \$335,597,184 |
| <b>2010</b> | \$147,452,543      | \$18,505,083       | \$191,424,085             | \$357,381,711 |

*Figure 10: Lobbying budgets for key industries, 2006-2010<sup>116</sup>*

To provide context, from 1998 to 2012, electric utilities were the third-largest industry by total spending on lobbying; oil and gas were sixth.<sup>117</sup> Looked at as a whole, the energy industry is perhaps the most dominant in Washington.



*Figure 11: Rise in lobbying expenditures by oil and gas, coal mining, and electric utilities, 2006 to 2010<sup>118</sup>*

### ***Political Donations and Influence Campaigns***

In general, the political donations of the energy sector, like their lobbying dollars, build on and reinforce the lines of natural allegiance. The goal of the donations is to

increase the incentives to follow industry preferences. Evidence from the 111<sup>th</sup> Congress suggests such efforts are at least somewhat effective.

For instance, take those Democrats who have consistently opposed climate legislation in the 2000s. As Figure 8 noted above,<sup>119</sup> between 2003 and 2010 eight Democratic senators consistently voted against and failed to co-sponsor legislation: Baucus (MT), Byrd (WV), Conrad (ND), Dorgan (ND), Landrieu (LA), Levin (MI), Nelson (NE), and Pryor (AR). Examining the fundraising records of these senators, connections quickly emerge. As an examples, let's take Mary Landrieu. From 2005 to 2010, both Marathon Oil and Koch Industries, perhaps the most famed opponent of climate legislation, were among her top ten contributors.<sup>120</sup> And during the 2008 campaign cycle, the oil and gas industry gave more to Landrieu than any other non-presidential-candidate Democrat.<sup>121</sup> Similarly in 2008, Max Baucus was the top Senate Democratic recipient of funds from the electric utilities industry outside the presidential candidates – even though his home state of Montana has less than one-half of 1% of the US population.<sup>122</sup> Donations by specific companies to specific elected officials tell a similar story; Conrad, Dorgan, Byrd, and Nelson each received substantial contributions from oil, coal, utility, and automotive sources.<sup>123</sup>

Admittedly, such data is only suggestive. What these data points suggest, however, is that political alliances with energy and related industries enhanced the incentives for many carbon-state Democrats to oppose cap-and-trade legislation. Such donations are not decisive, but they at least encourage elected officials to weigh the costs of opposing their industry backers.

If the individual level numbers are suggestive, the aggregate numbers give an overall picture for the role of the energy sector in Washington. Here are data on political donations from 2000 to 2012 for coal mining, oil and gas, and electric utilities.<sup>124</sup>

|       | <b>Coal mining</b> | <b>Oil and gas</b> | <b>Electric utilities</b> |
|-------|--------------------|--------------------|---------------------------|
| 2000  | \$3,516,361        | \$34,132,948       | \$13,464,492              |
| 2002  | \$3,713,794        | \$25,463,526       | \$19,481,576              |
| 2004  | \$2,474,346        | \$27,007,161       | \$20,864,388              |
| 2006  | \$2,888,776        | \$21,877,448       | \$15,879,966              |
| 2008  | \$3,515,021        | \$37,870,870       | \$16,001,836              |
| 2010  | \$5,394,548        | \$29,401,193       | \$21,434,196              |
| 2012  | \$4,410,821        | \$24,327,434       | \$19,259,676              |
| Total | \$25,913,667       | \$200,080,580      | \$126,386,130             |

*Figure 12: Political Donations for key industries, 2000-2012*<sup>125</sup>

To provide context, the oil and gas industry is the 5<sup>th</sup> largest business industry by political donations, behind only health professionals, securities/investors, insurance and real estate. Electric utilities are the 12<sup>th</sup> largest industry.<sup>126</sup>

### ***Other Sources of Opposition***

Coal, electric utilities, and oil and gas companies were not the only interests that fought against climate legislation. The U.S. Chamber of Commerce and the National Association of Manufacturers in particular played a significant role in both public relations and battles on Capitol Hill. Their exact expenditures on climate opposition are impossible to calculate from publicly available data; certainly they were in the tens of millions of dollars.

### **E. The Impacts of the Recession**

*If senators want to increase the loss of manufacturing jobs in the United States and postpone the resurgence of the American economy, then they should vote for this bill.*  
—National Petrochemical and Refiners Association, referring to climate legislation<sup>127</sup>

Though the 2008 recession is generally credited with having weakened the chances of passing climate legislation,<sup>128</sup> the precise impact of the recession remains unexplored. It is possible to imagine that the economic downturn would have spurred the passage of climate legislation.<sup>129</sup> As then- White House Chief of Staff Rahm Emanuel put it in a *Wall Street Journal* interview:

You never want a serious crisis to go to waste. Things that we had postponed for too long, that were long-term, are now immediate and must be dealt with. This crisis provides the opportunity for us to do things that you could not do before.”<sup>130</sup>

This is the tack that Obama took with health care. As he stated on the campaign trail in the wake of Lehman Brothers’ collapse, “Some say we can’t afford to reform health care now. I argue, how can we afford not to?”<sup>131</sup> The Democrats at large attempted to use a similar frame, arguing that climate legislation was a way to grow the economy through green jobs and clean energy. As Henry Waxman stated in his initial release of the legislation, “Our goal is to strengthen our economy by making America the world leader in new clean-energy and energy-efficiency technologies.”<sup>132</sup>

This frame ultimately did not stick, however. The gravity of the recession engendered fears among Americans about the long-term health of the economy – and therefore made the idea of raising the costs of doing business immediately suspect. Opponents of the bill capitalized on these fears. For example, the American Petroleum Institute launched a major campaign around jobs and the economy in fall 2010. Said Jack Gerard, API president, “Americans want to know that the government is working on



constructing solutions to the challenges we all face, jobs and economic recovery. From an energy perspective we don't think that's happening.”<sup>133</sup> The White House itself slowly backed away from the green-jobs-growth framing, finding that it wasn't playing well with the public.<sup>134</sup>

The recession also heightened pocketbook concerns over energy prices. The Pew Research Center, for example, found that the percentage of the public prioritizing the environment as the top issue dropped 15% between Earth Day 2008 and 2009.<sup>135</sup> As former Lieberman staffer David McIntosh said, “The ‘it will only sting a little’ argument only works if people are otherwise unstung.”<sup>136</sup> The concern of the public over rising energy prices, big government, and economic recovery made elected officials more hesitant to support the bill or at least gave them cover to oppose it. As Senator Ben Nelson of Nebraska expressed to the *New York Times*: “People who turn the switch on at home are going to be disadvantaged. As you turn on the lights, the electricity will cost more. Store owners, the same thing; manufacturers, the same thing.”<sup>137</sup> While Nelson was never supportive of climate legislation, Senator Jay Rockefeller (D-WV) voted for climate legislation in 2003 and in 2005, and changed his position in 2009. Speaking to *Politico*, he explained that the bill was not going to be popular back home.<sup>138</sup>

The recession also raised enormous hostility toward both big government and big finance, a hostility captured most clearly in the emergence of the Tea Party. As Eric Pooley wrote in *The Climate War*, the financial meltdown gave “the very idea of markets a bad name.”<sup>139</sup> All of a sudden the idea of another big government program, especially one that created new financial markets in carbon emissions, was politically unpalatable,<sup>140</sup> as was the idea of another policy that could be construed as a tax.<sup>141</sup>

In addition to shifting the political environment through public perception, the recession also directly impacted political priorities. Obama's campaign was built around promises on health care and energy; in the wake of the financial crisis, however, he was forced to pivot to financial bailouts and the stimulus package. These were politically costly legislative accomplishments, ones that detoured the White House from its pre-recession legislative agenda. They were also costly. Andrew Stern, president of the Service Employees International Union (SEIU), called the bailouts a "dragging anchor" on the president's agenda.<sup>142</sup> Moreover, Congress can only tackle so many issues at once, and between the stimulus, financial reform, and health care may have found itself exhausted. David Axelrod, one of Obama's top political strategists, expressed his concern about the Democrats in Congress: "The horse has been ridden hard this year and just wants to go back to the barn."<sup>143</sup>

The historical record supports the idea that bad times for the economy are bad times for environmental policy. As a report from the Center for American Progress points out, major environmental protection laws enacted since 1970 have generally been legislated during periods of low unemployment.<sup>144</sup> As Figure 13 demonstrates, of the 11 most important bills since 1970, seven were passed when unemployment was under 6%, four when unemployment was between 6% and 7.5%, and none when unemployment was higher than 7.5%. In 2009, unemployment averaged 9.3%.<sup>145</sup> This accords with the mainstream economic view that holds that environmental protection is an economic good; as societies grow wealthier, the theory suggests, they grow increasingly concerned about environmental protection. Logically, then, when the economy declines,

environmental goods become something of a luxury.<sup>146</sup> As one long-time environmentalist observed, “People only do the environment when they feel wealthy.”<sup>147</sup>

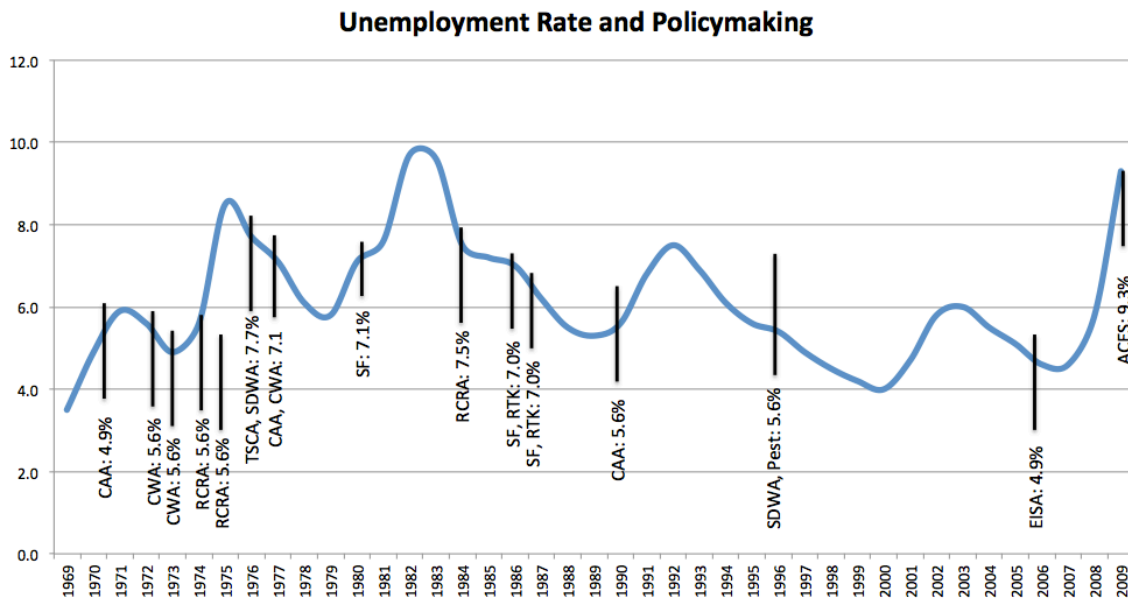


Figure 13: Major environmental bills and unemployment.<sup>148</sup>

## **F. Conclusion**

For the last 50 years, the U.S. energy system has resisted political reform. The combination of entrenched energy interests and the natural political geography of energy make any policy changes – especially those that threaten the status quo – inherently difficult. The energy industry encompasses some of the largest and most profitable corporations in the world, and, like all major industries in the U.S., they exercise substantial power in Washington. These industries wield even greater power in those states in which they create jobs – states like West Virginia, Wyoming, and Louisiana.

Even without the influence of the energy industry, however, states would still find it difficult to come to agreement on climate policy. Energy usage differs tremendously by

state, such that some states would bear a disproportionate portion of the costs associated with a rise in the price of carbon. Indiana and West Virginia are respectively 97% and 98% dependent on carbon-based fuels for electricity; Idaho and Washington each derive less than 20% of their electricity from such sources.

The situation was even more challenging during the 111<sup>th</sup> Congress. Political polarization had reinforced the walls between the parties over the course of the early 2000s, and these walls grew even thicker with the birth of the Tea Party. Where a handful of Republican senators had supported climate legislation in the early 2000s, by 2009 not a single GOP member of the upper house was willing to publicly endorse climate legislation. Meanwhile, the recession both highlighted energy costs concerns to consumers and shifted legislative priorities, distracting both the Obama White House and Democrats in Congress. In the face of these constraints, the victory in the House of Representatives was a testament both to the commitment of Representative Henry Waxman and to the hard work of key environmental organizations. But the obstacles proved too great for the pro-climate-reform forces in the Senate.

## **Part 3: Could Climate Legislation Have Succeeded?**

### **A. Introduction**

The lesson from the discussion above is that changing the status quo on energy policy is very, very difficult. The United States is in the middle of a long-term process of weaning itself off of fossil fuels. But progress is slow, hindered by political polarization, geography, and energy interests. During the 111<sup>th</sup> Congress oil, coal, and natural gas companies understood that the climate bill would accelerate the movement away from fossil fuels, and they resisted mightily.

In light of the difficulty of change in the energy policy arena, the climate movement made remarkable progress, bringing a bill all the way through the House of Representatives. That bill, however, already considered too weak by many environmental group,<sup>149</sup> was not close to passage in the Senate, where the forces of political geography, political polarization, energy interests, and the recession proved too great. The basic strategy adopted by climate advocates during the 111<sup>th</sup> Congress – a strategy focused on recruiting elite political actors, building consensus among thought leaders, and putting together a coalition of corporations and nongovernmental organizations (NGOs) – had, in other words, both great strengths and significant shortcomings.

Were the forces in the Senate too much for any progressive cause? Not necessarily. The 111<sup>th</sup> Congress, after all, saw major legislative victories on a host of other issues. In particular the passage of the Affordable Care Act, ending a century-long effort to create a universal health care system, suggests that there was room for major reforms on domestic issues – even those touching a large segment of the economy that carried uncertain fiscal and financial impacts.

Part 2 of this article discussed the forces that defeated climate legislation in the Senate. This part of the paper asks a slightly different question: what forces could have helped climate legislation succeed?

To begin answering that question, we need to look at comparable efforts that did succeed. Health care is a clear place to start. The parallels between health care and climate are obvious: both involved a huge sector of the economy; both had resisted previous presidential efforts and produced major failures under the last Democratic president; and both threatened powerful and deeply entrenched interests in Washington.<sup>150</sup> Most importantly, in both areas, reform promised few short-term benefits to the vast majority of Americans. Most Americans, after all, already have health insurance and had little to gain from reform, and major elements of the law (premium assistance, health care exchanges) would not take effect until almost four years after passage. In his discussion of the history of health care reform, Paul Starr calls this conundrum – the coincidence of a public with no real reason to question the status quo with a set of interests fiercely committed to protecting it – the health care “trap.”<sup>151</sup> When it comes to climate, the benefit of reducing climate change is essentially the maintenance of the status quo, which creates a similar “trap.”

How did the health care movement manage to create political opportunities to overcome this trap? In many ways the movements for health care and climate were similar. But three sets of forces were present in the health care fight that were missing in climate. First was supportive public opinion.<sup>152</sup> Issues of health care were more visible to the public than issues of the environment in general and climate in particular. Second was grassroots mobilization. Where the environmental campaign focused largely on inside-

the-beltway strategies, the campaign for health care devoted substantial energy to large-scale public organizing.<sup>153</sup> Third was presidential leadership. Where Obama was weak on climate he was strong on health care, and his focus on health care helped drive the successful campaign.<sup>154</sup>

These three sets of forces are all closely related. Supportive public opinion and mobilization depend on the strategies of legislative campaigns; where the health care movement focused deliberately on building public support for reform, the climate movement focused largely on recruiting support within Washington, DC. These two approaches shaped the president's priorities. Recently available evidence about Obama's first term and about health care reform suggest that Obama's decision to prioritize health care was based on his perception of the public's support for health – because health attracted more public attention and because there was a stronger movement for reform, Obama chose to raise health care to the top of the agenda.<sup>155</sup>

As a second comparison point, we can look to previous environmental policy campaigns. As noted in the introduction, climate is only the most recent dilemma in a long line of challenges arising from industrialization, consumption and population growth; since the late 19<sup>th</sup> century, our country and others have been attempting to deal with the impacts of industrial pollution while conserving natural resources for the future. Looking back at this history of environmental policymaking, the record suggests that public opinion and public mobilization are normally a must for successful legislative drives on economy-wide issues. Many of our major moments of environmental lawmaking – like the Wilderness Act of 1964, the spate of legislation in the early 1970s, and the Superfund legislation of the 1980s – emerged from a combination of grassroots

mobilizations and expressions of public support.<sup>156</sup> Environmental lawmaking in the public interest has always depended on an interested public.

This basic reading of the history of environmental policy comports with the political science literature on congressional decision making. As John Kingdon describes in his famous study, *Congressmen's Voting Decisions*, elected leaders must balance the positions of constituents, their political party, interest groups, and the administration against their own ideology.<sup>157</sup> Amidst these conflicting demands, the constituency – which is “the only actor in the political system to which the congressmen is ultimately accountable” – can take precedent, but only when an issue has high salience and voters have a clear position.<sup>158</sup> The lower the salience or prominence of an issue, however, the more room there is for other influences.<sup>159</sup> Active political support – like protests, rallies, and sit-ins – can make up for and even replace a lack of supportive public opinion by raising the salience of issues directly and indicating to elected officials the strength of preferences of a sub-group.<sup>160</sup> Moreover, work in sociology and political science suggests that, in the environmental context, these forces work in tandem – public opinion’s impact is heightened by protest, and protests are most successful when public opinion is supportive.<sup>161</sup>

Stronger public opinion or more visible, large-scale mobilization during the 111<sup>th</sup> Congress could therefore have shifted the political landscape and created additional space for reform. At the least, broad-based public engagement would have made reform much more likely.<sup>162</sup> Without salience or mobilization, however, there was no pressure for politicians to act, and other forces – like party and special interests – stepped in and took over.<sup>163</sup>



### *USCAP and the Climate Campaign*

Throughout this essay, except where otherwise stated, we implicitly assume that the climate campaign was a unified decision-making process under a single entity, largely synonymous with the actions and strategies of the U.S. Climate Action Partnership and the groups that made up USCAP and close affiliates.<sup>164</sup> This is, of course, an oversimplification. The 2008-2009 campaign for climate legislation was the culmination of a decade-long effort involving dozens of organizations, thousands of activists and advocates, millions of Americans, and hundreds of millions of dollars. As many have noted, this was one of the best-financed public interest political campaigns in history.<sup>165</sup> Any campaign of this size is inevitably riven with conflict and disagreement.

The assumption is justified for two reasons. The first is the relevance and size of the membership of USCAP. In 2009, USCAP included 33 members, of which five were nonprofit, 501(c)(3) organizations: the Environmental Defense Fund, the Natural Resource Defense Council, the Pew Center on Global Climate Change and the World Resources Institute. These organizations and their affiliated 501(c)(4) partner organizations had a combined budget in 2009 of nearly a billion dollars.<sup>166</sup> To give perspective on the relevance of these organizations, the remaining members of the Green Group<sup>†</sup> and their affiliated 501(c)(4) partners, which represent most of the other large, nonconservation environmental groups in the country, had a combined budget in 2009 of under \$250 million.<sup>167</sup> Moreover, these Green Group members were – with the important exception of Greenpeace and Friends of the Earth – generally supportive of USCAP’s policies and strategies. USCAP corporate partners included giants like General Electric,

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<sup>†</sup> As noted in the timeline above, the Green Group is an informal coalition of the largest environmental groups in the country,

Duke Energy, BP, Shell, John Deere, and Caterpillar, each of which invested millions in lobbying and advocacy. Other climate-specific groups outside of USCAP like 1SKY, 350.org, and the U.S. Climate Action Network had annual budgets of under \$5 million each.

It's not only USCAP's size, however, that made it relevant. Through a long series of internal negotiations among its nonprofit and for-profit members, USCAP developed a *Call to Action* and later a *Blueprint for Legislative Action*.<sup>168</sup> This *Blueprint* formed the basis for Henry Waxman's climate legislation, which he was able to move rapidly through Congress. Though lobbying around USCAP recommendations took place through individual corporations and organizations, there was a generally shared set of strategies and goals and ongoing political cooperation.<sup>169</sup> For example, it was largely members of USCAP and the Green Group more broadly that came together in 2009 to coordinate their field operations through Clean Energy Works.

Second, this discussion is largely focused on the activities of organizations traditionally considered part of the environmental movement, of which USCAP was by far the leading element. The article does not discuss the role of other players, like clean energy companies. The structure, strategies, and ethos of USCAP, in other words, can fairly be said to represent the overarching thrust of the environmental elements of the climate movement, which dominated though did not fully constitute the political forces pushing for climate action.

### **B. Public opinion**

*"Public opinion is an important engine of public policy in the American democracy."*<sup>170</sup>

— Robert S. Erikson, Michael B. Mackuen, and James A. Stimson, *The Macro Polity*

### ***Public Opinion and Political Change***

Comparing the political conditions surrounding climate in the 111<sup>th</sup> Congress, health care in the same Congress, and environmental causes in past Congresses, differences in the support of the public for each issue quickly stand out. Where health care was an issue of high priority for many Americans in 2009 and 2010, environmental issues at large (of which climate is only a subset) barely entered the public consciousness. In contrast, at moments of significant environmental lawmaking in the past, issues of conservation and the protection of nature were critically important to a majority of Americans. Had the climate movement had a supportive public behind it, it might have been able to overcome the forces arrayed against it; at the very least, the campaign would have found a more receptive audience on Capitol Hill.

The success of healthcare reform is a clear demonstration of the importance of public opinion. In the years leading up to 2009, reforming the healthcare system was a leading priority for many Americans. This was the case even though most Americans, as noted, already had healthcare coverage. In other words, rather than a widespread movement based on urgent individual demands for health care, there was an inchoate but broadly shared sense that the system as a whole needed reform. In a Gallup 2007 poll, for example, health care was listed as the third most important problem facing the country.<sup>171</sup> Likewise a poll by Pew in 2009 found that Medicare, health care, and health insurance were each separately in the top 10 of the most important issues facing the country.

Broadly shared concerns about health care translated into political action through a variety of direct and indirect expressions of public interest. During the Democratic primaries in 2008, for example, Democratic voters consistently elevated health care over other policy areas. This forced Obama and the other presidential candidates to focus their campaigns on the issue.<sup>172</sup> As a result, health care reform became a banner issue during both primaries and the regular election. Later, during Obama's first term, outside campaigns for health care reform – like that organized by the coalition Healthcare for America Now – found a receptive audience in the communities they were organizing, helping push forward the legislative drive.<sup>173</sup> Health care was in the air – and therefore on the agenda.

The same relationship between public opinion and policymaking has historically held in the arena of environmental policy, as best exemplified by the rise of environmental consciousness during the 1960s and 1970s. Beginning in the late 1950s, scientists began to understand the relationship between industrial pollution, animal life, and human health, developing the new discipline of ecology.<sup>174</sup> This new ecological framework was introduced to the mass public by Rachel Carson in her famous *Silent Spring*, a 1962 book that detailed the impacts of pesticides on nature and man alike. *Silent Spring* sold more than half a million copies and remained on the *New York Times* Bestsellers' List for 31 weeks, generating an enormous public outcry.<sup>175</sup> Nor was her work the only one that emerged in these years; a string of books contributed to a growing environmental consciousness, among which the most prominent were Murray Bookchin's *Our Synthetic Environment* and Stewart Udall's *The Quiet Crisis*.<sup>176</sup>

These works, combined with a series of public environmental scares over radiation and carcinogens in the national food supply,<sup>177</sup> shaped a new national consciousness. Between 1965 and 1970, for example, the percentage of the public identifying the environment as a top problem facing the country rose from 17% to 53%.<sup>178</sup> These shifts directly impacted policy makers.<sup>179</sup> Richard Nixon, for instance, came into office with little interest in environmental issues. But after reviewing polling that suggested the environment was near the top of the public agenda, he changed course;<sup>180</sup> even before the famous Earth Day of 1970, Nixon had signed into law the National Environmental Policy Act and proposed to Congress an extensive set of policy reforms.<sup>181</sup> This was only the first step in the construction of a broad and powerful environmental framework.<sup>182</sup> Commentators at the time credited public opinion's role in these policy reforms. A 1972 discussion of the rise of the environmental movement noted that it had been "a miracle of public opinion....Alarm about the environment sprang from nowhere to major proportions in a few short years."<sup>183</sup>

The impacts of this shift in public awareness continued to reverberate throughout American politics for decades. Public environmental concerns remained strong through the 1980s. A poll at the beginning of that decade found that 45% of Americans felt that protecting the environment was so important that no cost was too high;<sup>184</sup> in 1985, 80% of Americans were supportive of the full environmental regulatory framework.<sup>185</sup> Not surprisingly, Reagan's efforts at environmental deregulation sparked a strong backlash among the public.<sup>186</sup> A "period of clear public commitment to environmental regulation" subsequently drove "an extraordinary range in new experiments in environmental policy and management" during Reagan's second term.<sup>187</sup> Even into the early 1990s, a large

majority of the country – 76% in a 1990 Gallup poll – self-identified as environmentalists.<sup>188</sup> In response, George H.W. Bush campaigned on being an “environmental president” to distance himself from Reagan’s unpopular stances on environmental issues.<sup>189</sup> True to his campaign promises, Bush drove forward the Clean Air Act Amendments of 1990, establishing a market-based mechanism for regulating sulfur emissions.

Since then, however, public concern about the environment has waned steadily. Surveys of environmental concern show a downward trend from 1990 to the present.<sup>190</sup> Exactly why is difficult to say; some point to the influence of industry on public opinion, others to the very successes of the environmental movement that made environmental challenges appear less pressing. More banal explanations point to the economy. The ebbs and flows in opinion correlate with economic growth and recession, but above and beyond these ups and downs there is a secular decline in environmental concerns unrelated to the economy.<sup>191</sup> This is well illustrated by a Gallup poll that measures the willingness of Americans to make trade-offs between the environment and the economy. The poll has been taken every year since 1985. For the first time in its then 25-year history, the 2009 poll found that a majority of Americans were willing to sacrifice environmental quality for growth.<sup>192</sup> Obviously the Great Recession played an important role, in this decline<sup>193</sup> but in the early 1990s, during a serious recession, upwards of 60% of Americans remained supportive of the environment over the economy.<sup>194</sup>

It is not only that fewer Americans care about the environment but that Americans care less intensely about it. Students of public opinion discuss it along two axes: preference and salience.<sup>195</sup> Even among those Americans who still remain *generally*

supportive of a safer environment,<sup>196</sup> support has turned passive. In a 2007 Gallup poll, only four percent of Americans thought energy or environment was a top concern.<sup>197</sup> In another Gallup poll in 2009, energy was rated the ninth most important issue facing the country and environment the fifteenth.<sup>198</sup>

Willingness to act on climate change moves with broader trends in environmental public opinion, but as only one among many environmental issue, receives even less attention from voters. In the same 2009 Gallup poll ranking energy as the 9<sup>th</sup> most important issue facing the country, climate didn't register.<sup>199</sup> Another poll found climate change to be 20<sup>th</sup> on the list of voter concerns.<sup>200</sup> Others ranked it even lower.<sup>201</sup> Again, one key explanation for this decline is the 2009 recession, which had a huge impact on environmental concerns, including climate. But the sharp drop in public concern in 2009 came on top of a longer-term downwards trend.

The lack of public attention and concern for environmental issues is a major problem for the climate movement. Social and economic challenges are generally only addressed when they are high on the public agenda. So salience really matters. As do preferences. If issues have high public salience and voters' preferences are clear, elected officials often feel constrained to vote with those preferences.<sup>202</sup> On the other hand, if the prominence of an issue is low, it may never make it on the agenda. And if it does, elected officials are free to ignore it completely or make decisions based on personal ideology, political party, or the interests of particular constituencies. And the lower the salience of an issue, the more room there is for influence. Had global warming been an issue closer to Americans' hearts, the climate campaign might have been able to force elected officials to abandon their parties and industry allies. As it was, there is evidence to

suggest that it was climate's poor polling, among other factors, that discouraged Obama from a full-throated endorsement of a climate bill.<sup>203</sup>

If the long-term decline in environmental concerns can in part explain the relative apathy of Americans with regard to climate change, this suggests that the endless discussion among environmentalists, pollsters and academics over the public's grasp of climate science may miss the mark. Instead, concerned parties need to be thinking about how to bring back a felt urgency among the public for environmental protection like that of the 1960s and 1970s.

Others would argue, however, that public opinion simply doesn't matter for policymaking, pointing to the fact that most pieces of legislation don't require active public support to get on the agenda or through Congress. This is both true and beside the point. Most pieces of legislation – indeed the vast majority – affect relatively few people. Climate legislation, on the other hand, represented a major shift in U.S. domestic policy. Thousands of businesses, millions of workers, and hundreds of millions of consumers would have been directly affected. Legislation on this scale that puts the public interest ahead of entrenched business or political interests almost always requires public support. As Richard Andrews noted in his history of environmental policy making, major policy reforms succeed when “public sentiment outweigh[s] the traditional power of businesses and political elites.”<sup>204</sup> Had public opinion been more supportive, the climate movement might have been able to overcome the powerful set of forces protecting the status quo.

### *The Role of the Climate Movement*



The climate movement is not to blame for the long-term ebb in public opinion on the environment. But leading climate organizations did not work very hard to shift the state of opinion in 2009 and 2010.<sup>205</sup>

One way to see the overall strategic direction of the climate movement is to look at its budgets and spending on various political strategies. Of all of the major green groups involved in the climate fight, only Gore's Alliance for Climate Protection engaged in a meaningful way on the public airwaves. In 2009, the Alliance spent \$34 million on all forms of advertising.<sup>206</sup> But, though that may seem substantial, it represented less than half of what the Alliance hoped to raise and spend. As a result, the Alliance soon switched from a mass-market media strategy to an "elite" strategy, reducing the advertising spend aimed at average Americans.<sup>207</sup> Other major green groups did not make up the funding gap; the Environmental Defense Fund and the Natural Resources Defense Council, for example, together spent \$11,900,000 on all television and web advertising (of which a sizable percentage was unrelated to climate), equal to just over 5% of their combined budgets.<sup>208</sup>

Those who crafted this strategy might have believed that influencing public opinion was too difficult and spending on advertising futile. Opponents of the bill, at least, disagreed. The American Petroleum Institute spent 30% of its budget on advertising; the American Coalition for Clean Coal Electricity (ACCCE), 66%. Together, these two organizations alone spent \$88 million on advertising.<sup>209</sup> It would be surprising if such politically sophisticated organizations spent \$88 million without hopes of achieving an impact on public perceptions of an issue. And in fact internal polling by

ACCCE suggested that advertising by the coal industry was reshaping public perception about the energy source.<sup>210</sup>

Communications was so underemphasized that USCAP didn't even coordinate with Al Gore's effort. One staff member intimately involved with USCAP couldn't recall anything at all about Al Gore's Alliance for Climate Protection.<sup>211</sup> The same advisor admitted that the coalition had paid minimal attention to messaging strategy – and thereby undermined its own efforts.<sup>212</sup>

In a way, the members of USCAP can't be blamed for their lack of public communications expertise or effort. None of the key environmental members of the coalition -- the Environmental Defense Fund, the Natural Resources Defense Council, the Nature Conservancy, the Pew Center for Global Climate Change and the World Resources Institute<sup>213</sup> -- are focused on public opinion, public relations or even public education. While all the organizations regularly publicize their research and advocacy – through websites, newsletters and magazines, for example – none have programs explicitly focused on educating the public or shifting public opinion, with the one exception of high school education program run out of the Nature Conservancy.<sup>214</sup> Instead, these organizations generally focus on using science, law, policy and lobbying to influence policymaking in Washington and to enforce existing environmental regulations.

As a rough way to see the balance between these organizations' priorities, the table below counts the number of times that relevant keywords appeared in the 2011 annual reports of USCAP environmental members:<sup>‡</sup>

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<sup>‡</sup> The Pew Center on Global Climate Change, now the Center for Energy and Climate Solutions, does not have any annual reports publicly available.

| Words                               | Environmental<br>Defense Fund | Natural<br>Resources<br>Defense Council | Nature<br>Conservancy | World<br>Resources<br>Institute | Total |
|-------------------------------------|-------------------------------|---|-----------------------|---------------------------------|-------|
| <b>Public Engagement</b>            |                               |   |                       |                                 |       |
| mobilize/mobilization               | 1                             | 3                                       | 0                     | 0                               | 4     |
| grassroots                          | 0                             | 3                                       | 0                     | 0                               | 3     |
| educate/education                   | 1                             | 2                                       | 4                     | 1                               | 8     |
| outreach                            | 0                             | 2                                       | 0                     | 1                               | 3     |
| Public<br>Opinion/Polling/Poll      | 0                             | 1                                       | 0                     | 0                               | 1     |
| <b>Total Public<br/>Engagement</b>  | 2                             | 11                                      | 4                     | 2                               | 19    |
|                                     |                               |   |                       |                                 |       |
| <b>Science/Policy/Law</b>           |                               |   |                       |                                 |       |
| science/scientists                  | 17                            | 31                                      | 7                     | 8                               | 63    |
| lawyer/attorney                     | 3                             | 3                                       | 0                     | 1                               | 7     |
| lawsuit                             | 0                             | 8                                       | 0                     | 0                               | 8     |
| litigation                          | 0                             | 4                                       | 0                     | 0                               | 4     |
| lobby                               | 4                             | 1                                       | 0                     | 0                               | 5     |
|                                     |                               |   |                       |                                 |       |
| <b>Total<br/>Science/Policy/Law</b> | 24                            | 47                                      | 7                     | 9                               | 87    |

*Figure 14: Appearance of keywords in annual reports of USCAP members, 2011<sup>215</sup>*

This rough count suggests that the members of USCAP are far more interested in law, science and lobbying (87 references in annual reports) than in public education and outreach (19 references in annual reports). They are, to put it simply, not in the business of influencing public opinion. This overall strategy of focusing on science, law and policy has yielded political benefits over the years, helping to successfully defend previous policy victories and enforce environmental laws. As the climate campaign demonstrates, however, it may also come with costs when it comes to opinion. Polling during the climate campaign, for example, suggested that only 25% of Americans could say anything at all about the concept of cap-and-trade.<sup>216</sup>

The lack of focus on and attention to public opinion by the climate campaign contrasts sharply with the approach of the health care campaign. From the beginning of its work, Healthcare for America Now (HCAN) coalition saw the arena of public opinion as central to its work.<sup>217</sup> Because of hard lessons learned in the 1990s during the Clinton healthcare reform effort, HCAN conducted two years of polling to help shape its policy proposals. In contrast, the climate movement decided as far back as 1990 to pursue cap-and-trade and remained largely inflexible with regard to policy alternatives throughout the climate campaign; cap-and-trade, in fact, became synonymous with climate legislation.<sup>218</sup> Where HCAN recognized that politics had to drive policy, leaders within key green organizations thought policy could shape politics.

Admittedly, shifting public opinion on a national scale is a daunting undertaking for any movement. The important point is that the climate campaign did not, by and large, try. The member of the US Climate Action Partnership were not well-organized to influence public opinion, and so public opinion was not part of the campaign.

### **C. Political Mobilization**

*“Hell hath no fury like a conservationist aroused.”*

— Unidentified U.S. senator, 1967, quoted by Kirkpatrick Sale in *The Green Revolution*<sup>219</sup>

Active political support – from letter-writing campaigns and petitions to protests, rallies, and sit-ins – can make up for a lack of supportive public opinion by raising the salience of an issue directly to elected officials and indicating the strength of preferences of a group or movement and their willingness to clamor for change.<sup>220</sup> Both in the health care campaign and in previous epochs of environmental lawmaking, such mobilization

has been critical to success, complementing more “insider” lobbying and policy development strategies. Had the climate campaign in 2008-2010 had greater public engagement and a stronger grassroots movement, it might have been able to pressure the House to pass a stronger bill or forced the Senate to come around toward action. Without such support, however, the movement could not counter the power of energy interests nor overcome the inertia of the status quo.

### ***The Historic Role of Environmental Activism***

Historically, environmental grassroots mobilization has played an important role in driving forward policy in the face of business opposition and political stalemate.

One of the landmark accomplishments of the early environmental movement was the Wilderness Act of 1964. Leaders of the Sierra Club wrote the first draft of wilderness legislation after a powerful series of mobilizations and protests aimed at protecting the Dinosaur National Monument in the mid-1950s.<sup>221</sup> In the early 1960s, key conservation groups like the Wilderness Society, the Sierra Club, the Audubon Society, and the Izaak Walton League banded together around wilderness legislation, developing a network that coordinated on political strategy and membership mobilization.<sup>222</sup> By 1962, Congress was getting more mail on the wilderness bill than any other piece of legislation, leading directly to successful passage.<sup>223</sup> In recognition of their success, these groups expanded their mobilization efforts, using “letter writing, expressive ad campaigns and demonstrations at Congressional hearings,” to protect places like the Grand Canyon.<sup>224</sup>

Similarly, it was the outburst of popular support for environmental causes in the late 1960s and early 1970s, combined with the rise in public consciousness discussed

above, that created momentum for the major legislative accomplishments of Nixon's presidency. Perhaps the clearest manifestation of the populist energy of the environmental movement was the first Earth Day in 1970, which drew between 10 million<sup>225</sup> and 20 million Americans out into the streets.<sup>226</sup> In that year, Congress passed no fewer than five major environmental bills – the National Environmental Policy Act, the Water Quality Control Act, the Resource Recovery Act, a set of major amendments to the Clean Air Act (which established the policy regime in force to this day), and the act creating the National Industrial Pollution Control Council.<sup>227</sup>

The movement continued to build its base of public support throughout the 1970s; in one illustration of this growth, membership in the 12 largest environmental organizations expanded from about 100,000 in 1960 to more than 1 million by 1972;<sup>228</sup> by 1985, the environmental movement could count at least 5 million members.<sup>229</sup> The ongoing demand of the public for environmental protection fueled both the growth of environmental organizations (which expanded from a few hundred to three thousand during the 1970s) and in turn systemic policy changes at the federal level.<sup>230</sup> Over the course of the 1970s, 18 major environmental bills were signed into law.<sup>231</sup>

As discussed above, the success of the environmental movement during the 1970s was owed in part to supportive public opinion. But mobilization complemented public attitudes. A case in point is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) – better known as the Superfund Act. In 1976, reporters discovered that the neighborhood of Love Canal in Niagara Falls, NY was built on top of an enormous toxic waste dump. By 1978, families in the neighborhood had organized themselves to demand action. Similar discoveries in other areas “catalyzed a new

network of grass-roots environmental advocacy groups” that then worked together to push for federal intervention.<sup>232</sup> By 1980, the president has signed into law the new Superfund legislation, guaranteeing federal funds to clean up waste sites.<sup>233</sup>

Lois Gibbs, one of the key figures of the Love Canal saga, remained dissatisfied. In 1981 she founded the Citizens’ Clearinghouse for Hazardous Wastes to support other citizen groups and agitate for additional response. Within a few years, the network encompassed 1,300 groups; in 1986, through coordinated organizing – including letter writing, campaigns, town meetings, door-to-door canvassing, demonstrations, and civil disobedience – these groups drove through an important series of amendments to the Superfund Act.<sup>234</sup> Like the Wilderness Act and the legislative accomplishments of 1970 before it, CERCLA is an example of how a mobilized citizenry can both initiate and support environmental reform efforts.

### *Comparing Mobilization in Climate and Health Care*

But would mobilization have helped in 2009 and 2010? The success of the health care campaign suggests that it would have.

To make that comparison, it is useful to start with the center of gravity of the two movements: USCAP and HCAN. The two coalitions held functionally similar roles in the respective campaigns. Both were centralized efforts representing key organizations. Both played key roles in early policy formation and were central coordinating sites during the legislative process.<sup>235</sup> But while the groups occupied similar places within their respective movements, they were differently constituted:

- Where USCAP organized a coalition of DC-based organizations and corporations to work out the details of a cap-and-trade policy, HCAN pulled together the

nation's largest membership groups, like the AFL-CIO, SEIU, MoveOn.org, and others for the policy development process;<sup>236</sup>

- Where USCAP limited the coalition to politically moderate organizations with recognized influence in Washington, HCAN built a movement of more than 1,100 groups around the country;<sup>237</sup>
- Where USCAP developed a set of policies that its corporate members would accept, HCAN developed policies based on substantial polling and focus group work;
- Where HCAN's strategy was built from the outset on a combination of inside-the-beltway strategies and broad organizing efforts,<sup>238</sup> the climate movement waited until November 2009 – almost a year after Obama's election – to organize a centralized field operation.<sup>239</sup>

Because of its mobilizing efforts, HCAN was able to exert significant pressure on leaders in the House and Senate at key junctures. Through a range of expression of political power – from major marches and demonstrations to smaller rallies to still-smaller house parties – HCAN helped ensure active support from lukewarm allies like Maria Cantwell, (D-WA) Patty Murray (D-WA), and Kay Hagan (D-NC) and pushed legislators like Arlen Specter (D-PA)<sup>240</sup> to support specific policy positions.<sup>241</sup>

This point deserves emphasis. Given the stark polarization of the 111<sup>th</sup> Congress, the most important role for any movement on the left pushing for reform was to force congressional Democrats – who constituted majorities in both houses – to support legislation. The Democrats, at least until the loss of the Massachusetts Senate seat, had a majority in the House and a supermajority in the Senate. Any movement that could force recalcitrant Democrats to support its cause could succeed, even without a single Republican vote. As we will see below, this is one reason why the USCAP strategy of recruiting elites and searching for compromise from the outset failed; there was no reason for conservative Democrats to come around to support action.



In addition to pressuring members of the Senate, HCAN also put substantial pressure on Obama to follow through on his commitments from the earliest days of the 2008 campaign all the way through to final passage.

The leaders of HCAN also anticipated industry opposition and planned accordingly; indeed, it was on the basis of that knowledge that the movement was so focused on large-scale mobilization. HCAN's leader, Richard Kirsch, described how:

From the beginning we were convinced that we could not compete with the insurance industry and other corporate and health care opponents within the Beltway...the heart of the campaign had to lie outside the Beltway, where we could organize at the grassroots level [through] a major field program.<sup>242</sup>

In contrast, the major green groups felt ambushed by the onslaught of the opposition that began in the summer of 2009;<sup>243</sup> they were simply unprepared for the strength of the response by the energy industry to their legislative campaign and did not have the resources – especially the popular support – to effectively respond.

All of these grassroots efforts were combined with work inside Washington, where reform proponents ran a savvy lobbying effort on Capitol Hill. Kirsch recognized, in other words, the need for both an inside and an outside strategy.

Why did the health care reform movement adopt a combined inside/outside strategy when the climate movement focused only on the inside? Many point to the distinctions between the issues themselves. Where health care can be a matter of life and death for families, the argument runs, climate seems intangible and remote. Therefore it is easy to mobilize around health care and hard to mobilize around climate.

When it comes to political mobilization, however, the distinctions between the issues are not so clear. More than 85% of Americans had health care before 2009.<sup>244</sup> It was exactly by playing on the fears of already insured Americans that Republicans

defeated Bill Clinton's reform effort; the reform movement succeeded in 2009-2010 in part because it was able to assure Americans that it *wouldn't* affect their current coverage.<sup>245</sup> In other words, Americans weren't moved to push for health legislation in order to secure better health care for themselves, at least in the short term. The major beneficiaries of health care reform were in fact the uninsured—who are largely low-income Americans with little political clout. Moreover, while the Affordable Care Act helped some Americans immediately—for example, young people able to remain on their parents' plans for longer—the most important benefits both in terms of coverage and overall costs won't materialize for several years to come. Like climate, the health care bill promised future reforms whose direct benefits for average Americans was minimal. This, again, is what Paul Starr calls the health care “trap.” The trap suggests that we can't use narrow self-interest to explain health care reform. Nor can the differences between the issues of health and climate themselves explain the divergence in political strategies adopted by the two movements.

### *The Structure of the Climate Campaign and the Grassroots*

Instead, to get traction on explaining the difference between the campaigns, we have to look at the underlying structure of the two movements. Simply put, the organizations leading the climate campaign did not lend themselves to large-scale mobilization. Just as the key institutions in the reform effort ignored public communications, so too did they largely overlook grassroots organizing, underestimating its importance for successful policy change.

To see the general orientation of the climate movement, we can return to the U.S. Climate Action Project (USCAP). Its strategy was simple: build consensus among elite actors – leading green groups and the CEOs of multinational corporations – and then use that consensus to drive forward legislation in the House and Senate. Its policy proposals were developed by a small number of staff of these organizations based on a model originally proposed by EDF in the early 1990s. USCAP was designed to be a safe space for corporations and centrist green groups to find common ground; the effort excluded the Sierra Club, the largest membership-based environmental organization, on the assumption that the left-leaning club would not be interested in its corporate-friendly policies.<sup>246</sup> The goal, in other words, was not to foster a movement but rather to avoid the necessity for building one. In part, this was a logical consequences of the strengths inherent in the leadings organizations, like EDF and NRDC. As non-grassroots groups, they were not well suited to mobilization. They played to their strength: the inside game.

In so doing, however, the organizations not only did not contribute to building a larger movement but actively undermined it. As a result of the policy-formation process and policy decisions, the center of the movement alienated the left wing; groups like Greenpeace and Friends of the Earth found the proposals embedded in Waxman-Markey so compromised that they not only withheld their support but at times actively opposed the effort.<sup>247</sup>

Not surprisingly, accounts of the campaign for climate legislation cite many moments in which leaders of environmental organizations pleaded with elected officials for support but few in which they exercised genuine political power.<sup>248</sup> While leading

climate organizations had organizational heft and money, they lacked grassroots impact – the power of people writing letters, signing petitions, and marching in the streets.<sup>249</sup>

It could have been otherwise. The environmental movement maintains a large base of active supporters around the country. Because groups like EDF were seen as having sold out to corporate interests,<sup>250</sup> however, that political base was disinclined to mobilize. An important signal to this effect came from Carl Pope, long-time executive director of the Sierra Club. He agreed not to oppose Waxman-Markey in the House but promised to oppose any legislation in the Senate that had similar handouts to coal companies, recognizing where his membership stood on the issue.<sup>251</sup> Meanwhile, groups like 1Sky that focused on grassroots mobilization found that the compromises of Waxman-Markey, especially the hand-outs to coal companies, angered potential supporters, making organizing substantially more difficult.<sup>252</sup>

This is not to say that organizing was absent from the climate movement. 1SKY, which represented the largest coalition by membership in support of a climate bill, held a variety of actions, beginning in 2007 and continuing through the 111<sup>th</sup> Congress. Just after Obama's election, for example, 1SKY organized a Climate Day of Action with 40 partner organizations around the country; in Washington, 300 activists showed up to an event outside the U.S. Capitol.<sup>253</sup> In April 2009, after Henry Waxman introduced his draft bill, 1SKY again organized a series of actions around the country, generating 27 town hall meetings, 232 visits to congressional offices to drop off 1Sky materials, and 287 lobby meetings. These efforts generated media attention in local media markets and may have helped push the Waxman bill to the left.<sup>254</sup>

Nor were these the only efforts at organizing. During the summer and fall of 2009, a number of national organizations came together to form Clean Energy Works, an effort to centralize their efforts.<sup>255</sup> CEW included groups from the NAACP to NRDC to the Truman National Security Project.<sup>256</sup> It hired Paul Tewes, a veteran field organizer from the Obama campaign, to lead the team and manage the crew of field organizers deployed in more than 29 states.<sup>257</sup>

But the success of these efforts was decidedly mixed. There were hundreds of local events and thousands of points of contact with congressional offices, but the efforts rarely penetrated into the mainstream media and failed to create any sense among lawmakers that a dramatic mobilization was afoot. For example, the largest single action by the climate movement during those two years was a youth conference held in March 2009 in Washington, DC.<sup>258</sup> Power Shift, a conference organized by the Energy Action Coalition, brought approximately 10,000 young people to the grounds of the U.S. Capitol Building for what was described at the time as the largest global warming protest in U.S. political history.<sup>259</sup> The protest was covered only by alternative news sites, suggesting that it did little to ratchet up pressure on elected officials. Beyond climate-specific events, Earth Day 2009 and 2010 each served as an occasion for a mass gathering on the national mall, with numbers between 100,000 and 150,000 people each year.<sup>260</sup> As a recurring event, however, the celebrations – which combined politics with concerts and entertainment – were interpreted by the public as festivals rather than demonstrations of political will.<sup>261</sup>

Without substantial and publicly recognized mobilization, the climate movement's ability to shift legislators was limited. Conservative Democrats could safely

oppose action on climate (where they faced strong attacks for opposing health care reform), as could Republicans – even those who had in previous years supported reform.

Tellingly, veterans of the 1994 health care reform effort explain Bill Clinton’s defeat by pointing to the lack of grassroots support.<sup>262</sup> Like USCAP, Clinton’s White House famously developed their policies in relative secret, expecting that groups would get on board with the proposal once it was released.<sup>263</sup> The problem with the approach of both the Clinton White House and USCAP is that it failed to recognize the need for both an inside and outside strategy; by focusing only on Capitol Hill and ignoring the rest of the country, both the 1993 health care campaign and the 2010 climate campaign were hamstrung.

### ***What the Climate Campaign suggests about the Environmental Movement***

The climate campaign that failed to seriously engage grassroots organizations grew out of a very particular soil: modern American environmentalism. The mainstream environmental movement today in America is not what it once was. What grew up as a large-scale public movement has over the last four decades consolidated itself into a small set of powerful organizations.<sup>264</sup> These organizations – many of which are the same groups that made up USCAP -- focus their attention on the inside politics and policies of Washington, D.C., not on building political power among the public at large. Any campaign rooted in such a movement almost inevitably will tend to overlook grassroots organizing for lobbying and policy work.

One powerful signal about the priorities of the environmental movement is the structure of the organizations that compose it. Many early environmental groups were founded as democratic, membership-based institutions whose strength lay in numbers.

The Sierra Club, founded in 1892, is one such example, with regular elections of the organization’s officers by members. Likewise, the National Wildlife Federation, founded in 1936, has state-level affiliates that maintain meaningful control over national personnel and policies. Such political structures ensure that organizations stay true to constituents on policy positions; they also help keep citizen members actively engaged on relevant political issues.

In sharp contrast, the generation of organizations born in the late 1960s and 1970s that dominate the political scene today are organized along corporate lines, with a board of directors and staff unaccountable to members. All five of the nonprofit organizations affiliated with USCAP during the legislative battles of 2009 and 2010<sup>265</sup> have this form. The “members” of these organizations are in fact just small-level donors who contribute funds annually; as one critical social scientist has noted, the environmental groups have “no identified need to involve the public, except to obtain financial support.”<sup>266</sup> The top-down structure of groups like EDF and NRDC permits easier decision-making but makes mobilization far more difficult.<sup>267</sup> Of the top ten largest environmental organizations in the country, only three – the National Wildlife Federation (#5), the Sierra Club (#8) and Greenpeace (#10) – have meaningful membership activities. Taken together, these organizations constitute 8% of the total budget of the top ten groups.

| <b>Organization</b>               | <b>Budget</b>   |
|-----------------------------------|-----------------|
| Nature Conservancy                | \$1,172,365,000 |
| World Wildlife Fund               | \$233,682,129   |
| Wildlife Conservation Society     | \$208,000,000   |
| Natural Resources Defense Council | \$119,099,929   |
| National Wildlife Federation      | \$107,428,000   |
| Environmental Defense Fund        | \$98,082,806    |
| National Audubon Society          | \$84,539,000    |
| Sierra Club Foundation            | \$42,970,042    |

|                           |              |
|---------------------------|--------------|
| World Resources Institute | \$40,750,000 |
| Greenpeace Inc. USA       | \$27,465,948 |

*Figure 15: Annual budgets of top ten environmental organizations<sup>268</sup>*

In this regard, it is interesting to note that the National Wildlife Federation – an organization with a federated, democratic structure – dropped out of USCAP before the legislative battles of 2009 because of disagreements on policy.

Cary Coglianese, a professor of law and political science at the University of Pennsylvania, is one of many scholars who has written on the changes in the environmental movement over the last few decades. As she argues, from the 1970s to the 1990s the environmental movement shifted from a transformational set of social forces into a “fully institutionalized” part of the political process.”<sup>269</sup> As a result:

Politically, environmental groups have...deepened their commitment to insider political strategies, engaging in the same kinds of [strategies] that industry groups have traditionally used.<sup>270</sup>

Where environmental organizations once focused on building political will, they now focus on policy formulation, and nowhere is this more true than in the environmental groups that made up USCAP.

Since the failure of the climate bill, however, environmental groups seem to be moving in a new direction, returning to more direct forms of activism. The fight over the Keystone XL Pipeline, for example, included a series of protests, acts of civil disobedience, and a 12,000 person human circle around the White House. Through these efforts, environmentalists convinced the White House to delay its decision on the Pipeline till after the 2012 election.<sup>271</sup>

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To avoid misinterpretation, the above section should be summarized and the key points restated. The groups that made up USCAP accomplished a great deal, overcoming substantial political barriers to pass a bill through the House of Representatives. However, the effort came up short in the Senate, in part because of the lack of grassroots mobilization (and public opinion and presidential leadership). But we cannot lay blame for the lack of a large grassroots movement on the USCAP organizations and their allies. Instead, we must recognize two points: first, it is simple fact that the largest groups in the environmental movement today are focused on Washington-centric political strategies, and that these strategies not coincidentally formed the basis for the climate campaign these groups led. Second, the emphasis on the inside political strategies came at some costs with regard to the grassroots energy behind the climate campaign, in part because of poor coordination between the USCAP groups and organizations to their left.

#### **D. Presidential Leadership**

*“The only nonnegotiable principle here is success. Everything else is negotiable.”*  
— Rahm Emanuel, White House chief of staff<sup>272</sup>

Accounts of the Obama presidency make clear that President Obama made a decision early on to pursue health care reform as his top domestic priority and to put climate change legislation on the back-burner.<sup>273</sup> While the influence of presidential leadership is virtually impossible to measure in any exact fashion,<sup>274</sup> there is no doubt that this choice came with consequences. Had Obama chosen climate as his signature issue, it’s possible that the campaign for climate might have succeeded; it certainly would have fared far better.

### *The Power of Presidential Leadership*

The power of presidents in the national political process is significant. But although pundits and commentators regularly discuss such power as a given, explaining the exact manner in which that power is exercised has proved difficult for political scientists. Scholars of presidential power highlight a few mechanisms through which influence is exercised. First, the executive has the capacity to set the national agenda. Agenda setting is an enormous power. As Barbara Kellerman has noted, “There is typically no consensus on what constitutes a problem, on how to define those problems that manifestly exist, or even on which of the many pressing issues should take priority.”<sup>275</sup> Because of his position, the president is uniquely situated to establish priorities both among his own party and within Congress more broadly.

While a president’s powers are limited when it comes to Congress, they are at their peak on the issues highest on his agenda; as John Kingdon has argued, presidents usually prevail on their most critical issue.<sup>276</sup> The history of energy policy making in the last 40 years is a case in point. In that time, Jimmy Carter is the only president to successfully remake the energy policy regime. He is also the only president to make energy reform his top legislative goal. Carter came into office in 1977 with a strong commitment to national energy policy reform and, despite a number of political mishaps, successfully passed a number of pieces of major energy legislation in his first two years in office, including the act creating the Department of Energy and, as part of the National Energy Act, tax reform and conservation efforts. Though his policies and political strategies are open to criticism, his experience suggests at a minimum that presidential commitment can overcome the natural political barriers to energy policy making.<sup>277</sup>

The impact of a president's request, however, is directly connected to the intensity of that demand and the president's willingness to use sanctions to punish contrary action.<sup>278</sup> When a president makes requests for issues that are not his highest priority, his requests are given substantially less weight; when those closest to him on his staff are not interested in pursuing the policy goal, the weight of the request declines even further.<sup>279</sup> It was not feasible, in other words, for Obama to push both health care and climate legislation with equal vigor. Once he chose health care, the White House was forced to adopt a "stealth strategy" on climate, playing down its messaging and never making strong public commitments – like the establishment of a National Energy Council<sup>280</sup> – to push forward on a climate bill.<sup>281</sup>

While Obama was still supportive of climate legislation – he made a number of critical calls to help pass the Waxman-Markey bill<sup>282</sup> – the lack of sustained attention by the White House was significant. It gave room to legislators for inaction; in the Senate, Harry Reid was reported to have said in the fall of 2009, "If the White House asks me to take this bill to the floor before Copenhagen, that's what I'll do."<sup>283</sup> Without that ask, he did not act, and Reid's ultimate decision to pull climate from the agenda was only possible with the White House's tacit approval. In fact, Jonathan Alter reports that the White House considered Waxman's decision to push climate legislation in the summer of 2009 to have been a grave political mistake, as it distracted the House from health policy.<sup>284</sup>

The lack of attention to climate meant that mistakes were made; as Ryan Lizza reported, the White House made a series of tactical errors during negotiations simply by failing to communicate with John Kerry and Joe Lieberman.<sup>285</sup> It also meant that more

proactive strategies were not considered. For example, at a critical moment in the health care debate, President Obama convened the pharmaceutical companies and negotiated a deal, convincing them to throw \$80 million in advertising into the battle in support rather than in opposition. Many believe this exercise of presidential power was critical to success.<sup>286</sup> No such efforts were ever undertaken on climate. Finally, the White House's lack of attention to climate also reduced public visibility of the issue, where stronger presidential messaging could have raised the visibility of energy reform.<sup>287</sup>

In fairness to the administration, the White House did make important advances on climate in other arenas, largely through the work of Carol Browner, who led the White House Office of Energy and Climate Change. Browner, for example, helped formulate policies that funded a variety of clean energy and efficiency measures through the 2009 stimulus package. Browner and her office also played an important role during the negotiations over Waxman-Markey, helping coordinate the efforts of the president and various cabinet members to get Democrats in line behind the bill. Browner herself was able to skillfully liaison between Capitol Hill, the Administration, and the environmental community, heading off conflicts and building alliances. It's unlikely that Waxman-Markey would have passed the House without her efforts and President Obama's interventions.<sup>288</sup>

Yet as the above discussion suggests, the administration's efforts were still largely reactive. When Waxman seemed close to victory, or other signs boded well, the Obama team swung into action; otherwise, it largely sat back and waited. Without the kind of strong presidential leadership exercised on health care, the push for climate lost much of its momentum. Obama could have mobilized supporters, placed climate on the top of the

agenda, and exerted pressure on congresspersons to come around on their votes. Such efforts would have shifted the basic political calculus in both houses and changed the lay of the political land. Instead, Obama let the natural conservatism of the Senate and the many barriers to climate reform do their work.

### *The Political Calculations of Health and Climate*

Not surprisingly, many commentators have blamed Obama for the failure of climate policy.<sup>289</sup> Few have asked the next question, however: why did Obama choose health care over energy and climate? We cannot assume that the decision was taken lightly – Obama and his team are sophisticated political actors. Nor was it for personal reasons – as a senator, Obama’s top priorities were education, energy, and nuclear nonproliferation,<sup>290</sup> and he initially expressed little interest or enthusiasm for health care during the campaign.<sup>291</sup> Rather, it was the popular demand for health care reform that drove Obama to take up the issue.

As noted, one way this popular enthusiasm for health care reform was manifested was through the Democratic primaries. As Lawrence Jacobs and Theda Skocpol discuss in their book on the passage of the Affordable Care Act, health care was “intensely popular with rank and file Democrats.”<sup>292</sup> Throughout the campaign, Democratic primary voters voiced health care as a top priority, making it an area of critical debate between Obama and Hilary Clinton; it was the featured issue at the first Democratic presidential forum.<sup>293</sup>

Nor were Democrats the only ones concerned about health care. During the 2008 campaign, 26% of independent voters listed health care as a top priority.<sup>294</sup> As Jonathan

Alter points out, Obama therefore spent significant time on the campaign trail thinking about, talking about, and defending his health care plans; it was simply all around him.<sup>295</sup> Tellingly, 68% of Obama's total TV advertisements were devoted to health care, 86% during the month before the election.<sup>296</sup> Though Obama continued to voice support for energy till the end of the campaign,<sup>297</sup> Alter makes clear that by the time he took office, Obama was mentally and emotionally committed to health as his top priority, putting energy to the side.<sup>298</sup> And once he was publicly committed to passing health care, the political incentives for him to succeed were extremely high; failure would have "devastate[d] the Obama's presidency [and] weaken[ed] Democrats."<sup>299</sup>

Beyond Obama's commitment to follow through on his campaign health care promise, there was also the reality of ongoing political demand. Although the recession became increasingly important once Obama reached office, Americans continued to voice strong dissatisfaction with the health care system.<sup>300</sup> Though there was no national consensus around the specific policies that should be embedded in new legislation, there was a sense that the system needed reform of some kind. Political science Kent Weaver has described how such inchoate "public anger" can drive forward policy making even when there is no public agreement on policies, as it did for welfare in the 1990s.<sup>301</sup>

In contrast, climate had little to recommend it to the president, at least as a *political* issue. As discussed above, there was minimal political pressure on the president to push climate more forcefully, especially as the largest and most powerful environmental groups saw themselves as working in partnership with the White House rather than actively pressuring it to follow through on campaign promises.<sup>302</sup> Without mobilization, the Obama administration could afford to give climate low billing.

Meanwhile the public's limited enthusiasm for action on climate encouraged the opposition. The *New York Times*, for example, reported that Republican political operatives and strategists highlighted bad climate polling numbers in email blasts and newsletters circulated around Washington.<sup>303</sup>

In sum, Obama chose to pursue health care over climate after careful political calculation. Health and climate both posed political challenges. When it came to reform, however, health was the easier option. On the health side of the equation, there was a strong public demand for action, enthusiasm among Democratic voters for reform, and a well-organized grassroots movement demanding legislation. On the climate side, in contrast, there was limited public interest and demands coming only from elite political actors – actors who exercised limited leverage over the administration. In retrospect, Obama's decision to prioritize health care seems not only understandable but even prudent; with neither supportive public opinion nor any demonstration of capacity for mobilization, climate legislation seemed the less likely of the two issues to succeed.

### **E. Conclusion**

The campaign for climate legislation lacked three key political assets: public opinion, grassroots mobilization, and presidential support. More supportive public opinion would have created pressure on elected officials to endorse reform; without strong public demand, however, elected officials were free to follow the dictates of their consciences and their campaign bank accounts. Popular mobilization could have filled the gap left by public opinion, pushing elected officials to shift positions – either to come out in favor of climate legislation or to be more active in their support. Both opinion and

mobilization have been critical in past environmental campaigns, and they demonstrated their value during the health care battle.

Perhaps most importantly, more supportive public opinion and greater levels of grassroots activity might have changed the political calculus facing the White House, encouraging it to adopt climate as its priority or at least to spend more political capital on passage. Without such pressure, however, the White House chose to downplay climate legislation, leaving the issue adrift in the currents of political opposition.

Whether more positive public attitudes, increased political agitation, and a stronger administration effort could have overcome the barriers facing climate legislation is impossible to say. But history suggests that, without these assets, the campaign's chances of success were limited.



## **Part 4: Conclusion**

*"With public sentiment, nothing can fail. Without it, nothing can succeed."*  
— Abraham Lincoln

Entering the 111<sup>th</sup> Congress, hopes for action on climate change were high. Both presidential candidates – Barack Obama and John McCain – had advocated for a cap-and-trade system to put a price on carbon. Obama's victory had helped bring into office large Democratic majorities in both the House and the Senate. The climate community was mobilizing significant financial resources and had strong allies – like Henry Waxman and John Kerry – in key positions in both houses of Congress.

But these appearances belied the political challenges that faced climate advocates. Four key factors, in particular, combined to create a hostile political terrain for energy and environmental policy making. The first and most important was political polarization. In the decades leading up to the 2008 presidential election, Democrats and Republicans had grown steadily apart. From 2008 to 2010 they were further polarized by the financial crisis, President Obama's election, and the rise of the Tea Party, generating the most partisan Congress in U.S. history. As a result, climate change policies that were developed precisely to have bipartisan appeal – and that had once attracted moderate Republican support – faced universal opposition.

But parties were not all that mattered. In a political system in which power is determined as much by geography as by population, the distribution of natural resources can carry as much significance as the distribution of voters. As a review of voting records suggests, senators from states that produce carbon fuels and senators from states relatively more dependent on carbon-based electricity were much less likely than senators

from other states to support climate legislation. Because many of these carbon-state senators were Democrats, geography worked with polarization to heighten the barriers to reform. Republican opposition carried so much weight, in other words, because Democratic support from carbon states could not be relied upon; and Democratic opposition of carbon states mattered because Republican votes were nowhere to be found.

On the surface, these two challenges – Democratic and Republican opposition -- seem distinct. But the opposition of members of both parties was both rooted in and reinforced by the influence of energy interests. Industries like oil and coal have spent decades cultivating strong ties with representatives from carbon states – like Max Baucus of Montana and Robert Byrd of West Virginia – as well as many others on both the left and right. For these elected officials, protecting the energy industry was a well-established and lucrative tradition.

Nor have energy interests been content merely to influence legislators. Beginning in the early 1990s, these interests also began undermining the science behind global warming, sowing seeds of doubt among the public. Meanwhile, the energy industry cultivated a broader relationship with the Republican Party, pushing environmentalism into the left/right partisan framework that structures so many areas of policy making. After Republican elites adopted an anti-climate posture, it was only a matter of time before these ideas disseminated more widely; by 2008, the conservative base had adopted climate skepticism as catechism.

Unified Republican opposition did not lull energy industries into adopting a passive stance. During the 111<sup>th</sup> Congress, energy interests represented by groups like the

American Petroleum Institute and the Edison Electric Institute, as well as younger and more narrowly focused groups like Americans for Clean Coal Electricity – which served as a front group for the coal industry – waged an intense campaign against pro-climate forces, combining large lobbying and political donation budgets with extensive public relations efforts and even grassroots organizing. In 2010, for example, the oil, coal, natural gas, and electric utility industries donated more than \$20 million to political campaigns and spent more than \$350 million on lobbying.

The power of the energy interests was heightened by the 2008 financial crisis and subsequent recession. At a time when pocketbook issues were salient for Americans, rhetoric about the economic impact of climate legislation packed a strong punch. In addition to highlighting the economic impacts of the cap-and-trade component of climate legislation, the recession contributed to political polarization and sidetracked both Congress and the president from environmental issues.

Against these forces of polarization, geography, entrenched energy interests, and the recession, pro-climate forces made impressive headway, bringing a comprehensive climate bill successfully through the House of Representatives. But the campaign could advance no further. Like so many efforts before it, climate legislation could not overcome the 60-vote requirements of the Senate.

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In retrospect, it is relatively easy to identify the forces that defeated climate legislation, even if specifying their exact weight is difficult. But the more complicated and perhaps more important question remains: could a bill have passed?

As a start, we can say definitively that domestic political reform was not impossible. Overcoming decades of failure, the Congress and White House together overhauled the U.S. health care system during the 111<sup>th</sup> Congress, extending coverage to tens of millions of Americans.

The success of health care suggests that, despite polarization and the recession, there was space for political action. How did the health movement create and capitalize on that space and why did climate fail to do so? Two differences between the politics of health and climate suggest at least partial explanations. First, the American public was substantially more interested in health and health care reform than in climate and energy. Though Americans are generally supportive of action on climate change, the issue was not salient during the late 2000s; health care, on the other hand, was consistently among the issues rated as most important to Americans.

While many commentators are quick to explain this difference by suggesting that health care simply matters more to people because it's so personal, this assertion rests on shaky grounds. Most Americans had little to gain from health care reform in the short term, not unlike action on climate change. Moreover, there have been moments when Americans cared more about environmental reform than health for no obvious, socially objective reasons. The better question is why public opinion played out in the 111<sup>th</sup> Congress as it did. Though there is no single cause, we can look, at least as a start, at the respective approaches of the health care reform campaign and the climate campaign. Where the movement for health care reform crafted its legislative strategy around a policy developed through extensive public opinion research, the climate movement paid almost no attention to messaging. Likewise, policy on the climate side was developed

with little reference to the perspectives of the electorate. The lack of attention to message fits with the broader orientation of the environmental movement, which invests little in public education and communication. Even if the climate and environmental movements are not at fault for the low level of public interest in climate, they cannot claim to have tried very hard to fix it.

The second element that differentiated the health movement from the climate movement was grassroots mobilization. The health care movement, whose locus was in the Healthcare for America Now coalition, had a national grassroots strategy built into its campaign from the outset. At critical moments, the movement was able to mobilize supporters around the country and push both friends and foes to help bring a bill to successful passage. The climate movement, on the other hand, approached reform from the top down. The U.S. Climate Action Partnership was designed to build consensus among elite political actors – large corporations and major green groups – and bring that consensus position to and through the U.S. Congress. Both the structure and underlying philosophy behind USCAP left little room for collaboration or discussion with grassroots or membership groups. The environmental base simply did not figure into its plans, in part because the groups behind USCAP were not in the habit of consulting or connecting with the grassroots. As a result, there was division from the outset between USCAP and groups like the Sierra Club, as well as groups further on the environmental left. By the time green groups decided to collaborate on a field strategy, it was too late. Without a mobilized base, it was hard both to pressure potentially friendly senators into taking stronger stands and to meet the political assaults of energy interests on undecided senators.

The groups that constituted USCAP erred in believing that they could pass climate legislation without political mobilization. Historically, grassroots mobilization has been central to environmental policy making, especially to those moments when public interests have had to overcome entrenched commercial powers. From the Wilderness Act of 1964 to the burst of lawmaking in the early 1970s to the Superfund legislation of the 1980s, politically activated citizens have been indispensable in the fight to protect the environment.

The history of environmental legislation also suggests how public opinion and mobilization can influence presidential priorities. Nixon, Reagan, and the first Bush, each in their own ways, responded to public pressures on the environment, either to push forward policy initiatives themselves or to curb political attacks. In 2008, Obama faced little of the same pressure either from the public at large or from the environmental grassroots. Instead Obama faced a well-organized health care movement that generated pressure not matched by climate advocates. This in part explains why President Obama, originally less interested in health than in energy, ultimately chose to prioritize the former over the latter. That decision would prove momentous. Without presidential support, supportive public opinion, or a mobilized public, the climate campaign could not force the hands of conservative Democrats or Republicans in the Senate. Despite high hopes and enormous expenditures of time and money, the campaign was defeated without a vote even coming to the floor.

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Though the loss during the 111<sup>th</sup> Congress was a sharp blow, it is not the end of the climate movement. In due time, the issue will circle back to the center of the political

agenda and new opportunities for action will present themselves. If the loss in 2008-2010 is not to be in vain, the environmental community must draw lessons from its experiences to prepare for the next round.

As this article has shown, two lessons are clear. The climate campaign should have paid more attention to communicating with the public at large and been more thoughtful and careful about building support throughout its political base. Whether such efforts would have achieved victory is impossible to know. There's a fair chance that by 2008 it was already too late for the climate movement to succeed. Public opinion on climate had already shifted dramatically. And even the best grassroots campaign might not have found sufficiently fertile soil for organizing. A focus on public engagement would have improved the campaign's chances, but victory might have remained elusive.

But the analysis should not end there. The decision to minimize public engagement was not simply an oversight. It was fully in harmony with the political strategy of the climate campaign. Though there are exceptions, it is fair to say at the broadest level that the push for a climate bill was a centralized, top-down effort. It was exactly this top-heavy campaign that set the stage for the losses during the 111<sup>th</sup> Congress.

That campaign mirrors the structure of the environmental community more broadly. During the 1960s, 1970s, and into the early 1980s, the environmental movement built political power and used it to construct durable bulwarks around the natural world. But almost immediately after these successes, the movement slowly began consolidating itself into a set of large, Washington- and New York-based institutions. These institutions increasingly devoted the resources of the movement to policy, lobbying, and litigation.

Over time, they lost interest in building broad-based political power and shaping public opinion, consciously or unconsciously adopting a theory of political change focused on elite actors and inside-the-beltway operations. Consequently, the political muscles of the movement atrophied as the public grew ever more distant and disassociated. Polls reflect a public that is increasingly unconcerned with climate in particular and environmental issues in general.

The elite-focused strategy has been successful so far it goes; it has helped maintain the current environmental policy regime and fought back the occasional attack. But that strategy has not generated and likely cannot generate major expansions of the regime it so effectively protects. Since the 1990 Clean Air Act Amendments, there have been virtually no major environmental victories and no significant action on climate change. Today the movement invests far too great a percentage of its resources in fighting rearguard actions to defend the important but outdated policies and goals of the 1970s and 1980s. Modern environmentalism is an army defending an empty castle.

Without the engaged public and broader political base that the environmental movement might have built, the campaign for climate in 2008-2010 faced an uphill battle. The political terrain, in other words, was so hostile to reform exactly because the environmental community had not made the investments in the years prior to 2008 to reshape the landscape through public communication and organizing.

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At certain moments in American history there have been groundswells of political energy that have reformed our political system. The wave of conservation policy during the Progressive Era and the anti-pollution and environmental protection policies of the



early 1970s were two such moments. In a different world, the end of the first decade of the 21<sup>st</sup> century might have seen such political momentum. It was only because of the absence of such energy that climate advocates faced the political landscape that they did. And yet the very efforts of the climate campaign themselves reflected the kinds of choices that had negated the possibility of this broader social movement.

Faced with the lack of public support for action on climate, leading climate commentators like Eric Pooley and Joe Romm typically decry the institutional forces backing climate denial.<sup>304</sup> But whatever impact of climate denial, the movement cannot use the opposition of industry as an excuse. Corporations have always endeavored to undermine the scientific legitimacy behind progressive causes, from workplace safety in the early 1900s<sup>305</sup> to asbestos in the 1940s and 1950s<sup>306</sup> to the impacts of pesticides in the 1960s<sup>307</sup> to the dangers of tobacco in the 1980s and 1990s.<sup>308</sup> The job of the environmental movement is to overcome the forces of climate denial not only through the use of empirical data but with more powerful narratives and more aggressive and sustained organizing efforts.

But to even begin trying to recapture the imagination of the American people, the environmental movement must first make an about-face. The climate battles of the future can't be waged in the halls of Congress or even in the offices of General Electric. They can't be waged in courtrooms or boardrooms. The battle for the climate must be fought town by town, city by city, state by state. It must be fought in bookstores and in classrooms, online and in newspapers, at public meetings and around kitchen tables. This doesn't mean that the environmental movement should abandon lobbying, policy or efforts to influence elite opinion. These approaches, of which the US Climate Action

Partnership was a perfect embodiment, are necessary. But they are not sufficient. The ultimate lesson of the 111th Congress is that the environmental movement must make its case not only to leaders in Washington but to the American people.

## Appendices

*Appendix 1: Overview of Major Senate Climate bills in the 108th, 109th, 110th and 111th Congresses<sup>309</sup>*

*Appendix 2: Votes on Major Senate Climate Bills in the 108th Congress*

*Appendix 3: Votes and Sponsorships on Major Senate Climate Bills in the 109th Congress*

*Appendix 4: Sponsorship of Major Senate Climate Bills in the 110<sup>th</sup> Congress*

*Appendix 5: Sponsorship of Major Senate Climate Bills in the 111th Congress*

*Appendix 6: US Climate Action Partnership Membership, January 2009*

[Appendices will appear in online version]

## Endnotes

<sup>1</sup>See e.g. Jesse Jenkins and Devon Swezey, *Time to Bury Cap and Trade and Plan Anew*, The Breakthrough Institute, July 22, 2010, available at

[http://thebreakthrough.org/archive/time\\_to\\_bury\\_cap\\_and\\_trade\\_and](http://thebreakthrough.org/archive/time_to_bury_cap_and_trade_and).

<sup>2</sup>Ryan Lizza, *As the World Burns*, The New Yorker, October 11, 2010.

<sup>3</sup>ERIC POOLEY, *THE CLIMATE WAR: TRUE BELIEVERS, POWER BROKERS, AND THE FIGHT TO SAVE THE EARTH*, 2010.

<sup>4</sup>Matthew Nisbet, *Climate Shift*, American University School of Communication, Spring 2011, available at [www.climateshiftproject.org](http://www.climateshiftproject.org).

<sup>5</sup>See Andrew Revkin, *Beyond the Climate Blame Game*, New York Times Dot Earth, April 25, 2011, available at <http://dotearth.blogs.nytimes.com/2011/04/25/beyond-the-climate-blame-game/> (providing an extremely thorough account of the debate following the report's release).

<sup>6</sup>Nisbet *supra* note 4 at 19.

<sup>7</sup>In part this critique arose because of the funding of the report by the Nathan Cummings Foundation. The Foundation, critics noted, has also been an important funder of the Breakthrough Institute, an organization well known for its critiques of mainstream environmentalism in general and cap-and-trade in particular.

<sup>8</sup>See MICHAEL GRAETZ, *THE END OF ENERGY* (2011) at 183-184. For a broader discussion, see Dawn Erlandson, *The Btu Tax Experience: What Happened and Why It Happened*, 12 Pace Env'tl. L. Rev. 173 (1994).

<sup>9</sup>See POOLEY *supra* note 3 at 85-88. For a relatively recent news article comparing the 2009 climate vote in the House to the Clinton BTU vote, see Paul Kane and Shailagh Murray, *Among House Democrats in Rust Belt, a sense of abandonment over energy bill*, Wash. Post, July 27, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/26/AR2010072605656.html>.

<sup>10</sup>See *Conditions on U.N. Framework Convention on Climate Change/Passage (in Sen.) S Res 98*, in CONGRESSIONAL ROLL CALL 1997 (1998), available at <http://library.cqpress.com/congress/rc1997-193-9300-567584>.

<sup>11</sup>See *Clinton Hails Global Warming Pact*, CNN Politics (December 11, 1997), [http://articles.cnn.com/1997-12-11/politics/1997\\_12\\_11\\_kyoto\\_1\\_press-for-meaningful-participation-greenhouse-gas-emissions-kyoto?\\_s=PM:ALLPOLITICS](http://articles.cnn.com/1997-12-11/politics/1997_12_11_kyoto_1_press-for-meaningful-participation-greenhouse-gas-emissions-kyoto?_s=PM:ALLPOLITICS). Lieberman switched from Democrat to "Independent Democrat" in the 110<sup>th</sup> and 111<sup>th</sup> Congresses.

<sup>12</sup>See *Legislation In The 106th Congress Related To Global Climate Change*, Center for Climate and Energy Solutions, available at <http://www.c2es.org/federal/congress/106>; *Legislation In The 107th Congress Related To Global Climate Change*, Center for Climate and Energy Solutions, available at <http://www.c2es.org/federal/congress/107/climate-change-legislative-proposals>.

<sup>13</sup>*Legislation In The 107th Congress Related To Global Climate Change*, Center for Climate and Energy Solutions, <http://www.c2es.org/federal/congress/107/climate-change-legislative-proposals>

<sup>14</sup>*Id.*

<sup>15</sup>See Interview with Elizabeth Thompson, Director of Congressional Affairs, Environmental Defense Fund, and Executive Director, Environmental Defense Action,

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June 27, 2012. Fund, ; Interview with Senior Executive, Natural Resources Defense Council, (source requested anonymity).

<sup>16</sup>See Brent D. Yacobucci and Kyna Powers, *Climate Change Legislation in the 108<sup>th</sup> Congress*, Congressional Research Service, January 6, 2005.

<sup>17</sup>*Climate Change/Substitute (in H.R.) S 139*, in CONGRESSIONAL ROLL CALL 2003 (2004), available at <http://library.cqpress.com/congress/rc2003-230-9738-617454>. See Appendix 1 for an overview of Senate climate bills in the 108<sup>th</sup> Congress.

<sup>18</sup>See *Energy Policy -- Climate Change (in Sen.) HR6*, in CQ WEEKLY ONLINE (2005), available at <http://library.cqpress.com/congress/wklyoe-245-11136-725252>.

<sup>19</sup>*Energy Policy -- Climate Change (in Sen.) HR6*, in CQ WEEKLY ONLINE (2005), available at <http://library.cqpress.com/congress/wklyoe-245-11136-725256>.

<sup>20</sup>See Interview with Elizabeth Thompson, *supra* note 15.

<sup>21</sup>Pooley *supra* note 3 at 166.

<sup>22</sup>See *A Call for Action*, US Climate Action Partnership, available at <http://www.us-cap.org/about-us/our-report-a-call-for-action/>.

<sup>23</sup>See *Major Businesses And Environmental Leaders Unite To Call For Swift Action On Global Climate Change*, January 23, 2009, available at <http://www.us-cap.org/newsroom/>

<sup>24</sup>See Andrew Revkin, *Gore Group Plans Ad Blitz on Global Warming*, N.Y. Times, April 1, 2008.

<sup>25</sup>Nisbet, *supra* note 4 at 13.

<sup>26</sup>See Appendix 4 for an overview of climate bills in the Senate in the 110<sup>th</sup> Congress.

<sup>27</sup>Jonathan Ramseur and Brent D. Yacobucci, *Climate Change Legislation in the 110<sup>th</sup> Congress*, Congressional Research Service, January 7, 2008.

<sup>28</sup>See Rick Boucher and John Dingell, *Letter to Members of the Committee on Energy and Commerce on Climate Change Discussion Draft Legislation*, October 7, 2008, available at <http://www.instituteforenergyresearch.org/wp-content/uploads/2008/10/committee-memo.pdf>.

<sup>29</sup>See e.g. Felicity Barringer & Andrew C. Revkin, *Bills on Climate Move to Spotlight in the New Congress*, N.Y. Times, Jan. 18, 2007, <http://www.nytimes.com/2007/01/18/washington/18climate.html>; *Capitalism to the Rescue* <http://www.nytimes.com/2008/10/05/magazine/05Green-t.html> (noting concerns over a “tulipmania-like bubble in green tech” as a result of climate legislation); Klaus Deutsch, *US Climate Legislation: A Brief History*, Deutsche Bank, June 23, 2008 (noting that “we are optimistic that both US and international progress will be forthcoming in the run up to the 15th Conference of the Parties in Copenhagen, Denmark, in December 2009.”). Similar beliefs held in the legal community. See e.g. Melissa Onken, Sharon Tomkins, Lisa Wing Stone, *Litigating Global Warming: Likely Legal Challenges to Emerging Greenhouse Gas Cap-and-Trade Programs in the United States*, 39 Env’tl. L. Rep. News & Analysis 10389 (2009) (stating that “Regulating greenhouse gas emissions through cap-and-trade programs appears inevitable in the United States...” and “With increasing political discourse over global warming, cap-and-trade programs to regulate greenhouse gases (GHGs) appear inevitable in the United States”); J.R. DeShazo & Jody Freeman, *Timing and Form of Federal Regulation: The Case of Climate Change*, 155 U. Pa. L. Rev. 1499, 1561 (2007).

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- <sup>30</sup> In the October 7, 2008 debate in Nashville, TN, Obama claimed energy was his top priority. *See* <http://edition.cnn.com/2008/POLITICS/10/07/presidential.debate.transcript/> for a transcript of the debate. *See also* Barack Obama, *Energy & Environment*, available at <http://www.barackobama.com/issues/energy/>; John Broder, *Obama Affirms Climate Change Goals*, N.Y. Times, November 18, 2008, available at <http://www.nytimes.com/2008/11/19/us/politics/19climate.html>.
- <sup>31</sup> *See* Press Release, *The Energy and Environment Team*, Change.gov, available at [http://change.gov/newsroom/entry/the\\_energy\\_and\\_environment\\_team/](http://change.gov/newsroom/entry/the_energy_and_environment_team/)
- <sup>32</sup> John Broder, *Democrats Oust Longtime Leader of House Panel*, N.Y. Times, November 20, 2008, available at [www.nytimes.com/2008/11/21/us/politics/21dingell.html](http://www.nytimes.com/2008/11/21/us/politics/21dingell.html)
- <sup>33</sup> On this critical decision, see JONATHAN ALTER, *THE PROMISE* 92-116, discussing the evolution of Obama's thinking during the weeks leading up to his inauguration.
- <sup>34</sup> *See* ALTER *supra* note 33 at 114-116.
- <sup>35</sup> *id* at 255.
- <sup>36</sup> Interview with Senior Advisor, US Climate Action Project, June 11, 2012 (source requested anonymity); Interview with Senior Executive, Natural Resources Defense Council, June 28, 2012 (source requested anonymity).
- <sup>37</sup> *A Blueprint for Legislative Action*, US Climate Action Partnership, January 15, 2009, available at <http://www.us-cap.org/policy-statements/>.
- <sup>38</sup> *See* Lizza *supra* note 2.
- <sup>39</sup> *See* ALTER *supra* note 33 at 260.
- <sup>40</sup> *See Greenhouse Gas Emissions -- Passage. HR2454*, in CQ WEEKLY ONLINE(2005), available at <http://library.cqpress.com/congress/floorvote111-217584000>.
- <sup>41</sup> *See* ALTER *supra* note 33 at 260.
- <sup>42</sup> *See* POOLEY *supra* note 3 at 400-420.
- <sup>43</sup> *See* Eric Pooley, *Exxon Works up New Recipe for Frying the Planet*, Bloomberg News, August 24, 2009, available at <http://www.bloomberg.com/news/2009-08-24/exxon-works-up-new-recipe-for-frying-the-planet-eric-pooley.html> (describing how the American Petroleum Institute organized "Energy Citizen" rallies across the country); POOLEY *supra* note 14 at 400-403.
- <sup>44</sup> *See* Julie Kosterlitz, *Inside the Energy Bill War Room*, National Journal, March 20, 2010. *See also* POOLEY *supra* note 3 at 419-420 (discussing CEW).
- <sup>45</sup> *See* John Kerry and Lindsey Graham, *Yes We Can (Pass Climate Change Legislation)*, October 10, 2009, available at <http://www.nytimes.com/2009/10/11/opinion/11kerrygraham.html>.
- <sup>46</sup> *See* Interview with David McIntosh, former lead on climate policy for Senator Joe Lieberman, June 6, 2012.
- <sup>47</sup> *See* Lizza *supra* note 2.
- <sup>48</sup> *See* Lisa Lerer, *Climate Bill Passes without GOP*, Politico, November 5, 2009, available at <http://www.politico.com/news/stories/1109/29181.html>.
- <sup>49</sup> *See* Lisa Lerer, *Senators look past Barbara Boxer's climate bill*, Politico, November 6, 2009, available at <http://www.politico.com/news/stories/1109/29223.html>
- <sup>50</sup> *See* POOLEY *supra* note 3 at 419.

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<sup>51</sup> See Richard Cowan & Thomas Ferraro, *US Congress may push immigration over climate bill*, Reuters, April 21, 2010, available at <http://www.reuters.com/article/2010/04/21/climate-usa-congress-idUSN2110677720100421>.

<sup>52</sup> See John Broder, *Graham Pulls Support for Major Senate Climate Bill*, April 24, 2010, available at <http://www.nytimes.com/2010/04/25/us/politics/25graham.html>.

<sup>53</sup> see e.g. David Herszenhorn, *Democrats Abandon Sweeping Energy Plan*, N.Y. Times (July 22, 2010), available at <http://thecaucus.blogs.nytimes.com/2010/07/22/democrats-pull-plug-on-sweeping-energy-bill>

<sup>54</sup> See GRAETZ *supra* note 8 at 220-222 (discussing congressional committees and energy policy).

<sup>55</sup> See Ezra Klein, *The History of the Filibuster in One Graph*, Washington Post (May 15, 2012), [http://www.washingtonpost.com/blogs/ezra-klein/post/the-history-of-the-filibuster-in-one-graph/2012/05/15/gIQAVHf0RU\\_blog.html](http://www.washingtonpost.com/blogs/ezra-klein/post/the-history-of-the-filibuster-in-one-graph/2012/05/15/gIQAVHf0RU_blog.html)

<sup>56</sup> The filibuster is regularly decried by both the right and the left, depending on who is in power. For a discussion of the filibuster and climate legislation, see David Roberts, *The Real Reason the Climate Bill is Going to Suck*, Grist (November 3, 2009), <http://grist.org/article/2009-11-02-the-real-reason-the-climate-bill-is-going-to-suck/>.

<sup>57</sup> I owe this observation to Eric Pooley. POOLEY *supra* note 3 at 400 (so noting).

<sup>58</sup> Cindy Chen and Mike Hicks, *The Paradox of Politics*, Environmental Protection, May 1, 2007, available at <http://eponline.com/articles/2007/05/01/the-paradox-of-politics.aspx>

<sup>59</sup> *id.* at 3.

<sup>60</sup> See *infra* note 63.

<sup>61</sup> See Appendix 2 for votes on major senate climate bills in the 108<sup>th</sup> Congress.

<sup>62</sup> *Energy Policy -- Climate Change (in Sen.) HR6*, in CQ WEEKLY ONLINE (2005), available at <http://library.cqpress.com/congress/wklyoe-245-11136-725256>.

<sup>63</sup> More broadly, the entire evolution of environmental policy – from a command-and-control model to a market-based model – is best understood as an effort to earn Republican support by adopting market-friendly mechanisms for achieving environmental goals. As Darrell West and Burdett Loomis note, in a period of just a few decades, the U.S. has seen “a remarkable shift in the overall political agenda from government regulation to market-based policy making.” DARRELL WEST & BURDETT LOOMIS, *THE SOUND OF MONEY* at 9. Lawrence Jacobs and Theda Skocpol discuss a similar shift towards market-based mechanisms in healthcare; see LAWRENCE JACOBS & THEDA SKOCPOL, *HEALTH CARE REFORM AND AMERICAN POLITICS* 87-88. For a discussion of the political history of cap-and-trade, see Richard Conniff, *The Political History of Cap-and-Trade*, The Smithsonian Magazine, August 2009, <http://www.smithsonianmag.com/science-nature/Presence-of-Mind-Blue-Sky- Thinking.html>; for a broader discussion of the meaning of the shift towards market-based mechanisms, see BRUCE ACKERMAN & WILLIAM HASSLER, *CLEAN COAL/DIRTY AIR* 10-30. For a discussion of the political benefits of cap-and-trade, see J.R. DeShazo & Jody Freeman, *Timing and Form of Federal Regulation: The Case of Climate Change*, 155 U. Pa. L. Rev. 1499, 1539-40 (2007), at 1540-1561.

<sup>64</sup> See *Greenhouse Gas Emissions -- Passage. HR2454*, in CQ WEEKLY ONLINE (2005), available at <http://library.cqpress.com/congress/floorvote111-217584000>.



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<sup>65</sup> Lawrence R. Jacobs and Robert Y. Shapiro, *Politics and Policymaking in the Real World*, in JEFF MANZA, FAY LOMAX COOK & BENJAMIN I. PAGE, NAVIGATING PUBLIC OPINION 59-60.

<sup>66</sup> Peter Orzag, *The Looming Showdown*, Democracy: A Journal of Ideas, Issue 25, Summer 2012, available at <http://www.democracyjournal.org/25/the-looming-showdown.php>, at 32. See also Aaron M. McCright and Riley E. Dunlap, *The Politicization Of Climate Change And Polarization In The American Public's Views Of Global Warming, 2001–2010*, The Sociological Quarterly (2011), 155–194, at 157.

<sup>67</sup> Andrea Seabrook, *CQ: 2009 Was The Most Partisan Year Ever*, National Public Radio Online, January 11, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=122441095>

<sup>68</sup> *id.*

<sup>69</sup> see ORESKES & CONWAY, MERCHANTS OF DOUBT *supra* note 74 (discussing the role of the oil industry and others in undermining scientific legitimacy on climate and thereby shifting public debate).

<sup>70</sup> See *supra* notes 61-62 and accompanying text.

<sup>71</sup> Interview with Senior Official, EPA *supra* note 70.

<sup>72</sup> See, e.g., Lizza *supra* note 2; Daniel Weiss, *Anatomy of a Senate Climate Bill Death*, Center for American Progress, October 2010, available at [http://www.americanprogress.org/issues/2010/10/senate\\_climate\\_bill.html](http://www.americanprogress.org/issues/2010/10/senate_climate_bill.html).

<sup>73</sup> See Darren Samuelsohn, *Climate bill blame game begins*, Politico, July 22, 2010, available at <http://www.politico.com/news/stories/0710/40132.html> (noting that “Primary politics sent several one-time Republican climate advocates running for cover.”).

<sup>74</sup> For a discussion of the origins and make-up of the Tea Party, see THEDA SKOCPOL & VANESSA WILLIAMSON, THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM.

<sup>75</sup> See POOLEY *supra* note 3 at 404-405.

<sup>76</sup> See John Broder, *Climate Change Doubt is Tea Party Article of Faith*, N.Y. Times, October 20, 2010, available at <http://www.nytimes.com/2010/10/21/us/politics/21climate.html>.

<sup>77</sup> The particular origins of the Tea Party’s opposition to climate are often traced to the Koch Brothers. See e.g. Jane Mayer, *Covert Operations*, The New Yorker, August 30, 2010, available at [http://www.newyorker.com/reporting/2010/08/30/100830fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2010/08/30/100830fa_fact_mayer). Mayer’s piece cites a Greenpeace report describing Koch Industries as a “kingpin of climate science denial” and pointing out their strong ties to the Tea Party. While such strong claims should be treated with caution, the Koch brothers have certainly played some role in bolstering the efforts to deny the science behind climate change.

<sup>78</sup> See Joe Romm, *Defeated By Tea-Party, Sen. Lugar Warns: ‘Republicans Cannot Admit To Any Nuance In Policy On Climate Change’*, ThinkProgress, May 9, 2010, available at <http://thinkprogress.org/climate/2012/05/09/480945/defeated-by-tea-party-sen-lugar-warns-republicans-cannot-admit-to-any-nuance-in-policy-on-climate-change/?mobile=nc>.

<sup>79</sup> For a discussion of the history and arguable unconstitutionality of the filibuster, see Emmet J. Bondurant, *The Senate Filibuster: The Politics of Obstruction*, 48 Harv. J. on Legis. 467 (2011).



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<sup>80</sup> See GRAETZ *supra* note 8 at 223.

<sup>81</sup> See e.g. Tom Munteer, *Comprehensive Federal Legislation to Regulate Greenhouse Gas Emissions*, 39 Env'tl. L. Rep. News & Analysis 11068, 11069 (2009); William R. Montalvo, *Cracks On The Wall: Why States Should Be Allowed To Lead On Climate Change*, 21 Fordham Env'tl L. Rev. 383, 387.

<sup>82</sup> See e.g. Munteer *supra* note 90 at 11069; William R. Montalvo, *Cracks On The Wall: Why States Should Be Allowed To Lead On Climate Change*, 21 Fordham Env'tl L. Rev. 383, 387.

<sup>83</sup> *Visualizing the US Electric Grid*, National Public Radio Online, available at <http://www.npr.org/templates/story/story.php?storyId=110997398>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See Lizza *supra* note 2.

<sup>88</sup> See Paul Kane et al., *House Democrats Predict Narrow Win for Cap-and-Trade Bill*, Wash. Post, June 26, 2009, at A4 (noting that “Democrats have been bogged down in an internal feud between coastal liberals, who supported a hard cap, and legislators from the Rust Belt and farm states. Those representatives were worried the bill would add a crushing new cost to electric power and gasoline.”).

<sup>89</sup> See Lizza *supra* note 2.

<sup>90</sup> For a full listing of votes by Senator by bill, see Appendix 3.

<sup>91</sup> See *Visualizing the US Electric Grid supra* note 92; for data on congressional votes, see Appendix 2.

<sup>92</sup> *State Ranking: Coal Production, 2010*, U.S. Energy Information Administration, available at <http://205.254.135.7/state/state-energy-rankings.cfm?keyid=30&orderid=1>.

<sup>93</sup> *State Ranking: Total Energy Production, 2009*, U.S. Energy Information Administration, available at <http://205.254.135.7/state/>.

<sup>94</sup> See Appendix 3, Votes and Sponsorships on Major Senate Climate Bills in the 109<sup>th</sup> Congress.

<sup>95</sup> See Appendix 4, Sponsorship of Major Senate Climate Bills in the 110<sup>th</sup> Congress.

<sup>96</sup> See Appendices 2, 3, 4 and 5.

<sup>97</sup> Michael I. Cragg & Matthew E. Kahn, *Carbon Geography: The Political Economy of Congressional Support for Legislation Intended to Mitigate Greenhouse Gas Production*, National Bureau of Economic Research, May 2009, available at <http://www.nber.org/papers/w14963>.

<sup>98</sup> John Broder, *Geography is Dividing Democrats over Energy*, N.Y. Times, January 26, 2009, available at <http://www.nytimes.com/2009/01/27/science/earth/27coal.html>.

<sup>99</sup> See John Broder, *Democrats Unveil Climate Bill*, N.Y. Times, March 31, 2009, available at <http://www.nytimes.com/2009/04/01/us/politics/01energycnd.html> (noting that Waxman’s initial bill “offers a sweetener for members from coal-producing states by including \$10 billion in new financing... Representative Rick Boucher, a Democrat from the coal-rich southwestern corner of Virginia, insisted on that provision...”).

<sup>100</sup> See Sophia Hamilton, *When Scientific Palmers Make Policy: The Impact and Future of Cap-and-Trade in the United States*, 4 J. Bus. Entrepreneurship & L. 269, 308-09 (2011), at 307-308.

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<sup>101</sup> See Lisa Lerer, *In Senate, coal field climate deals*, Politico, November 17, 2009, available at <http://www.politico.com/news/stories/1109/29596.html>; Broder *supra* note 107.

<sup>102</sup> See generally GRAETZ *supra* note 8.

<sup>103</sup> John E. Chubb, *INTEREST GROUPS AND THE BUREAUCRACY: THE POLITICS OF ENERGY* (1983) at 4-5.

<sup>104</sup> *id* at 5.

<sup>105</sup> *id* at 5.

<sup>106</sup> The literature on industry capture is enormous. For its early origins, See e.g. Samuel P. Huntington, *The Marasmus of the ICC: The Commission, the Railroads, and the Public Interest*, 61 YALE L.J. 467 (1952); MARVER BERNSTEIN, *REGULATING BUSINESS BY INDEPENDENT COMMISSION* (1977) at 74-95, 169-71.

<sup>107</sup> Chubb *supra* note 112 at 5.

<sup>108</sup> See GRAETZ *supra* note 8 at 230.

<sup>109</sup> See MICAH SIFRY & NANCY WATZMAN, *IS THAT A POLITICIAN IN YOUR POCKET? WASHINGTON ON \$2 MILLION A DAY* 100-109.

<sup>110</sup> JOHN KINGDON, *CONGRESSMEN'S VOTING DECISIONS* 37.

<sup>111</sup> My interviews with Senate and House staffers reinforced this point. As David McIntosh pointed out, "Senators are driven primarily by home-state economic interests." Interview with David McIntosh *supra* note 46.

<sup>112</sup> As noted, there has been substantial debate about the lobbying expenditures. See *supra* note 5 and accompanying text. The debate started with Nisbet's report. See Nisbet, *supra* note 4, at 1-24; blogger Joe Romm and Drexel Professor Robert Brulle responded. For a review of the critique of Nisbet's numbers, see Bryan Walsh, *Battling Over the Climate War*, Time.com, November 4, 2011, available at <http://science.time.com/2011/04/25/battling-over-the-climate-war>.

<sup>113</sup> See, e.g., LEWIS ANTHONY DEXTER, RAYMOND A. BAUER & ITHIEL DE SOLA POOL, *AMERICAN BUSINESS AND PUBLIC POLICY: THE POLITICS OF FOREIGN TRADE*; KEN KOLLMAN, *OUTSIDE LOBBYING*.

<sup>114</sup> WEST & LOOMIS *supra* note 63.

<sup>115</sup> Richard Hall and Alan V. Deardorff, *Lobbying as Legislative Subsidy*, American Political Science Review, Vol. 100, No. 1, February 2006, available at <http://www.pavroz.ru/dov/halllob.pdf>

<sup>116</sup> See *Interest Groups*, Online Database, Center for Responsive Politics, available at <http://www.opensecrets.org/industries/index.php>.

<sup>117</sup> See *Lobbying Top Industries*, Online Database, Center for Responsive Politics, available at <http://www.opensecrets.org/industries/index.php>

<sup>118</sup> See *Interest Groups*, Online Database, Center for Responsive Politics, available at <http://www.opensecrets.org/industries/index.php>.

<sup>119</sup> See *supra* note 105 and accompanying text, explaining the choice of these senators.

<sup>120</sup> See *Top 20 Contributors, Senator Mary L. Landrieu, 2005 - 2010*, Center for Responsive Politics, available through search at <http://www.opensecrets.org>.

<sup>121</sup> See *Oil and Gas, Top Recipients, 2008*, Center for Responsive Politics, available through search at <http://www.opensecrets.org>.

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<sup>122</sup> See *Electric Utilities, Top Recipients, 2008*, Center for Responsive Politics, available through search at <http://www.opensecrets.org>.

<sup>123</sup> See *Politicians and Elections*, Online Database, Center for Responsive Politics, available at <http://www.opensecrets.org>.

<sup>124</sup> See *Interest Groups*, Online Database, Center for Responsive Politics, available at <http://www.opensecrets.org/industries/index.php>.

<sup>125</sup> See *Interest Groups*, Online Database, Center for Responsive Politics, available at <http://www.opensecrets.org/industries/index.php>.

<sup>126</sup> see *Top 50 Industries*, Online Database, Center for Responsive Politics, available at <http://www.opensecrets.org/industries/index.php>; I do not include “retired” and “leadership PACs” as business industries.

<sup>127</sup> PR Newswire, May 12, 2009, *NPRA Says New Senate Climate Bill Should be Rejected*, available at <http://www.prnewswire.com/news-releases/npra-says-new-senate-climate-bill-should-be-rejected-93597544.html>.

<sup>128</sup> See e.g. POOLEY *supra* note 3 at 294; GRAETZ *supra* note 8 at 215; David Roberts, *Why did the Climate Bill Fail*, Grist, July 26, 2010, available at <http://grist.org/article/2010-07-26-why-did-the-climate-bill-fail/>; Weiss *supra* note 81; Interview with Senior Official, EPA, *supra* note 70; Interview with Senior Executive, NRDC, *supra* note 36; Interview with Jessica Olson, lawyer and lobbyist at the Ayres Law Group, March 23, 2012; Interview with Elizabeth Thompson, *supra* note 15; Interview with David McIntosh *supra* note 46.

<sup>129</sup> See Peter Baker, *Obama Team Weighs What to Take On First*, N.Y. Times, November 8, 2008, available at <http://www.nytimes.com/2008/11/09/us/politics/09promises.html?scp=13&sq=climate+legislation+expectations&st=nyt> (noting that “The argument for an aggressive approach in the mold of Franklin D. Roosevelt or Lyndon B. Johnson is that health care, energy and education are all part of systemic economic problems and should be addressed comprehensively.”).

<sup>130</sup> See Gerald Seib, *In Crisis, Opportunity for Obama*, Wall Street Journal, November 21, 2008, available at <http://online.wsj.com/article/SB122721278056345271.html>.

<sup>131</sup> See ALTER *supra* note 33 at 33. See also JACOBS & SKOCPOL *supra* note 63 at 17, 43 (arguing that economic crisis created an opportunity for reforming basic economic systems like health care).

<sup>132</sup> See Broder, *supra* note 108.

<sup>133</sup> See Anne Mulkern, *Oil Group, Climate Bill Supporters Clash in Summer Campaigns*, Greenwire, August 17, 2010, available at <http://www.nytimes.com/gwire/2010/08/17/17greenwire-oil-group-climate-bill-supporters-clash-in-sum-86272.html>.

<sup>134</sup> See POOLEY *supra* note 3 at 361.

<sup>135</sup> See *15 points – An Inconvenient Truth*, Pew Research Center, available at <http://pewresearch.org/databank/dailynumber/?NumberID=709>. See also Frank Newport, *Americans: Economy Takes Precedence Over Environment*, Gallup.com, available at <http://www.gallup.com/poll/116962/Americans-Economy-Takes-Precedence-Environment.aspx>

<sup>136</sup> See Interview with David McIntosh *supra* note 46.

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- <sup>137</sup> John Harwood, *No Clear map for Democrats on Path to New Energy Plan*, N.Y. Times, November 8, 2009, <http://www.nytimes.com/2009/11/09/us/politics/09caucus.html>.
- <sup>138</sup> See Darren Samuelsohn, *Climate bill blame game begins*, Politico, July 22, 2010, available at <http://www.politico.com/news/stories/0710/40132.html>.
- <sup>139</sup> See POOLEY *supra* note 3 at 294; GRAETZ *supra* note 8 at 215 (noting that “in the wake of the recent financial crisis, opaque markets may have lost some of their appeal.”).
- <sup>140</sup> See Interview with Elizabeth Thompson, *supra* note 15.
- <sup>141</sup> See Harwood *supra* note 146 (noting that “rising joblessness has amplified attacks from critics who deride Mr. Obama’s energy policy as a big-government ‘cap and tax’ plan”); Interview with Jessica Olson, *supra* note 137 (noting that the recession gave extra impetus to arguments on Capitol Hill that cap-and-trade was “just another tax.”).
- <sup>142</sup> See ALTER *supra* note 33 at 262.
- <sup>143</sup> See Lizza *supra* note 2.
- <sup>144</sup> See Weiss *supra* note 81.
- <sup>145</sup> *id.*
- <sup>146</sup> These ideas are paralleled in research on environmental Kuznets curve, in which environmental degradation at first increases as a society industrializes and then decreases as the society is able to “afford” environmental protection. For a survey of the discussion of environmental kuznet curves, see e.g. Soumyananda Dinda, *Environmental Kuznets Curve Hypothesis: A Survey*, Ecological Economics, Vol. 49, Issue 4, 1 August 2004, Pages 431–455. For a critique of the existence of kuznet curves, and by extension arguments about whether the environment is a good whose desirability changes with economic conditions, see David Stern, *The Rise and Fall of the Environmental Kuznets Curve*, World Development, Volume 32, Issue 8, August 2004, Pages 1419–1439.
- <sup>147</sup> Interview with Senior Official, EPA, *supra* note 70.
- <sup>148</sup> I owe this figure to Daniel Weiss. See Weiss *supra* note 81.
- <sup>149</sup> Interview with Liz Butler, Campaign Director, 1SKY, September 28, 2012.
- <sup>150</sup> See Steve Mufson, *Climate Bill's Dress Rehearsal*, Washington Post, June 3, 2008, available at [http://onfaith.washingtonpost.com/postglobal/energywire/2008/06/climate\\_bills\\_dress\\_rehearsal.html](http://onfaith.washingtonpost.com/postglobal/energywire/2008/06/climate_bills_dress_rehearsal.html)
- <sup>151</sup> PAUL STARR, REMEDY AND REACTION: THE PECULIAR AMERICAN STRUGGLE OVER HEALTH CARE REFORM at 44.
- <sup>152</sup> See *infra* notes 180-213 and accompanying text.
- <sup>153</sup> See *infra* notes 229-280 and accompanying text.
- <sup>154</sup> See *infra* notes 282-312 and accompanying text.
- <sup>155</sup> See *infra* notes 298-312 and accompanying text.
- <sup>156</sup> See ROBERT GOTTLIEB, FORCING THE SPRING 76-82 (discussing the origins of the Wilderness Act); 148-158 (discussing the movements that culminated in the passage of the Clean Water and Clean Air Acts Amendments, among others); 247-251 (discussing the grassroots mobilization that culminated in Superfund legislation). See also RICHARD ANDREWS, MANAGING THE ENVIRONMENT, MANAGING OURSELVES 224-231 (discussing public mobilization leading to environmental

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policymaking in the 1970s); 247-248 (discussing grassroots-movements and Superfund legislation). For a broader discussion of the role of the public and public narratives in driving environmental change, see Jed Purdy, *The Politics of Nature*, Yale Law Journal, April 2010, 119 Yale L.J. 1122..”.

<sup>157</sup> KINGDON *supra* note 119 at 6.

<sup>158</sup> *id* at 30.

<sup>159</sup> See G. William Domhoff, *The Power Elite, Public Policy and Public Opinion* in MANZA, COOK & PAGE *supra* note 65 at 126.

<sup>160</sup> See Aldon Morris, *Birmingham Confrontation Reconsidered*, American Sociological Review, Vol. 58, No. 5, Oct., 1993, pp. 621-636

<sup>161</sup> See Jon Agnone, *Amplifying Public Opinion: The Policy Impact of the U.S. Environmental Movement*, Social Forces, Vol. 85, No. 4, June 2007 at 1606 (noting that “an increase in public support for environmental protection has a positive and significant impact on the passage of laws favorable to the environment when accompanied by increases in protect, above and beyond the direct effects of each.”).

<sup>162</sup> Some commentators on energy and climate have ultimately come to the same conclusion. See e.g. POOLEY *supra* note 3 at 440-441, GRAETZ *supra* note 8 at 262. Al Gore also drew similar conclusions from his experiences with climate policy; see POOLEY *supra* note 3 at 315.

<sup>163</sup> See KOLLMAN *supra* note 122 at 83.

<sup>164</sup> For a richer discussion of the climate campaign, see generally POOLEY *supra* note 3 (providing an overview of the climate campaign beginning around 2007 and concluding in summer 2009).

<sup>165</sup> Nisbet *supra* note 4 at iv.

<sup>166</sup> *id* at 11. Note that Nisbet’s calculations include the National Wildlife Federation, which by 2009 had left the USCAP coalition.

<sup>167</sup> *id* at 5.

<sup>168</sup> See USCAP *Blueprint*, *supra* note 37.

<sup>169</sup> With notable exceptions. As legislation proceeded to the Senate, for example, tensions arose and a number of groups, including BP, Conoco and Caterpillar, left the coalition. See GRAETZ *supra* note 8 at 239 (explaining their departure).

<sup>170</sup> See ROBERT ERIKSON, MICHAEL MACKUEN & JAMES STIMSON, THE MACRO POLITY 284.

<sup>171</sup> Lydia Saad, *Americans View of "Most Important Problem" Continues to Be Iraq*, Gallup, June 22, 2007, available at <http://www.gallup.com/poll/27949/americans-view-most-important-problem-continues-iraq.aspx#2>.

<sup>172</sup> JACOBS and SKOCPOL *supra* note 63 at 30-34.

<sup>173</sup> See RICHARD KIRSCH, FIGHTING FOR OUR HEALTH (2012) at 105-141 (discussing the growth of the grassroots movement for healthcare reform).

<sup>174</sup> ANDREWS *supra* note 165 at 217.

<sup>175</sup> See e.g. ROBERT BRULLE, AGENCY, DEMOCRACY AND NATURE 182-183 (noting that “Historians are virtually unanimous about the importance of this book in [the] development of modern...environmentalism.”); GOTTLIEB *supra* note 165 at 121-128 (arguing that “the mission of *Silent Spring* became nothing less than an attempt to create a new environmental consciousness...[and Carson] was successful in her task.”);



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FITZPATRICK SALE, *THE GREEN REVOLUTION* 3-5 (noting that Carson “galvanized a constituency that no one had realized was there”).

<sup>176</sup> See, e.g., BRULLE *supra* note 184 at 184 (discussing Bookchin and Udall);

GOTTLIEB *supra* note 165 at 127-134 (discussing Bookchin);

<sup>177</sup> ANDREWS *supra* note 165 at 202.

<sup>178</sup> Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. Pa. L. Rev. 85, 95 (2001).

<sup>179</sup> For a discussion of how public opinion can directly impact politicians’ agendas, see Jacobs and Shapiro *supra* note 65 at 66.

<sup>180</sup> ANDREWS *supra* note 165 at 225.

<sup>181</sup> *id.* at 225-228.

<sup>182</sup> *id.* at 233.

<sup>183</sup> Hazel Erskine, *The Polls: Pollution and its Costs*, Public Opinion Quarterly Vol. 35, 1972

<sup>184</sup> SALE *supra* note 184 at 39.

<sup>185</sup> SALE *supra* note 184 at 51.

<sup>186</sup> For a discussion of the reaction to Reagan’s effort to undercut the environmental regulatory framework, see SALE *supra* note 184 at 50-52.

<sup>187</sup> ANDREWS *supra* note 165 at 256.

<sup>188</sup> SALE *supra* note 184 at 80.

<sup>189</sup> See ANDREWS *supra* note 165 at 331; GOTTLIEB *supra* note 165 at 262.

<sup>190</sup> See e.g. Jeffrey M. Jones, *Worry about U.S. Water, Air Pollution at Historical Lows*, Gallup, April 13, 2012, available at <http://www.gallup.com/poll/153875/worry-water-air-pollution-historical-lows.aspx>.

<sup>191</sup> See e.g. the Gallup Polls from 1984 to 2011, data available at David P. Daniels, Jon A. Krosnick, Michael P. Tichy and Trevor Tompson, *Public Opinion on Environmental Policy in the United States*, Stanford University, available at <http://comm.stanford.edu/faculty/krosnick/docs/2011/Environmental%20Attitudes%20Lit%20Review.pdf>, at 28 (showing data from a variety of environmental surveys over time).

<sup>192</sup> Frank Newport, *Americans: Economy Takes Precedence Over Environment*, Gallup.com, available at <http://www.gallup.com/poll/116962/Americans-Economy-Takes-Precedence-Environment.aspx>.

<sup>193</sup> Scruggs, L., Benegal, S., *Declining public concern about climate change: Can we blame the great recession?* Global Environ. Change (2012).

<sup>194</sup> *The Environment*, Gallup, available at <http://www.gallup.com/poll/1615/environment.aspx>.

<sup>195</sup> See KOLLMAN *supra* note 122 at 10-11, 24.

<sup>196</sup> See Joe Romm, *Gallup: 65% of Americans Have More Guts Than Obama, Support ‘Imposing Mandatory Controls On CO2 Emissions’*, Thinkprogress, April 10, 2012, available at <http://thinkprogress.org/climate/2012/04/10/461246/gallup-americans-have-more-guts-than-obama-support-mandatory-controls-on-co2-emissions/>.

<sup>197</sup> Lydia Saad, *Americans View of "Most Important Problem" Continues to Be Iraq*, Gallup, June 22, 2007, available at <http://www.gallup.com/poll/27949/americans-view-most-important-problem-continues-iraq.aspx#2>.

<sup>198</sup> *id.*

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<sup>199</sup> *id.*

<sup>200</sup> Andrew Revkin, *Environmental Issues Slide in Poll of Public Concerns*, The New York Times, January 22, 2009, available at

<http://www.nytimes.com/2009/01/23/science/earth/23warm.html>.

<sup>201</sup> *The Public's Political Agenda*, Pew Research Center, January 25, 2010, available at <http://pewresearch.org/pubs/1472/public-priorities-president-congress-2010>; *Economy, Jobs Trump All Other Policy Priorities In 2009*, Pew Research Center, January 22, 2009, available at <http://www.people-press.org/2009/01/22/economy-jobs-trump-all-other-policy-priorities-in-2009/>.

<sup>202</sup> See, e.g., KINGDON *supra* note 119 at 44 (noting that “on high-salience issues the constituency is more important on the congressman’s decision than it is on other issues.”); KOLLMAN *supra* note 122 at 156 (noting that that “at times, constituency opinion seems to overwhelm policymakers and influence policy independently of any interest group”); Jeff Manza and Fay Lomax Cook, *The Impact of Public Opinion on Public Policy* in MANZA, COOK & PAGE *supra* note 65 (noting that “The salience of a particular issue for the public may matter both for the possibility of shifts over time in public opinion and for the likelihood that politicians will listen to the public...higher visibility of salient issues means that the costs to politicians of deviating from median preferences are higher” [internal citations omitted]).

<sup>203</sup> Revkin *supra* note 209.

<sup>204</sup> See ANDREWS *supra* note 165 at 211. Andrews also notes that the shift in the environmental policy framework occasioned during the 1970s “represented a sudden and extraordinary reversal of the long-standing primacy of business interests in American governance.” *id.* at 231.

<sup>205</sup> Exactly which organizations constitute the climate movement is open to debate; here and elsewhere I use “the climate movement” to refer to the large mainstream environmental organizations that dominated debate on climate policy: the Environmental Defense Fund, the Natural Resources Defense Council, Pew Charitable Trusts and the Sierra Club, among others. See Nisbet *supra* note 4 at 7-20 for a thorough discussion of the green groups involved in the climate campaign.

<sup>206</sup> Nisbet *supra* note 4 at *iv*.

<sup>207</sup> POOLEY *supra* note 3 at 308.

<sup>208</sup> Author’s calculations based on data from Nisbet, *supra* note 4 at 7-20.

<sup>209</sup> Author’s calculations based on data from Nisbet, *supra* note 4 at 22.

<sup>210</sup> Pooley *supra* note 3 at 301.

<sup>211</sup> *id.*

<sup>212</sup> See Interview with Senior Advisor, USCAP, *supra* note 36.

<sup>213</sup> See Appendix 6 for full listing of USCAP members. As noted, the National Wildlife Federation dropped out of USCAP before the release of the *Blueprint* in 2009, *supra* note 175.

<sup>214</sup> Based on author’s review of the websites and annual reports of each organization. Annual reports from years prior to 2011 are not publicly available for all organizations. See, e.g., *Environmental Defense Fund 2011 Annual Report*, available at [www.edf.org/annual-reports/2011](http://www.edf.org/annual-reports/2011); *Natural Resources Defense Council 2011 Annual Report*, available at <http://www.nrdc.org/about/annual/>; *The Nature Conservancy 2011*

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*Annual Report: Generations*, available at <http://www.nature.org/about-us/our-accountability/annual-report/index.htm>; the *World Resources Institute Annual Report 2011*, available at <http://www.wri.org/publication/wri-annual-report-2011>.

<sup>215</sup> *id.*

<sup>216</sup> See Anthony Leiserowitz, *Climate Change in the American Mind: Public Support for Climate and Energy Policies in January 2010*, Yale F&ES Project on Climate Change, available at <http://environment.yale.edu/climate/files/PolicySupportJan2010.pdf> (showing that 60% of Americans had never heard of cap-and-trade). An additional 15% had no idea what it was. See Andrew Revkin, *Beyond the Climate Blame Game*, N.Y. Times Dot Earth, April 25, 2011, available at <http://dotearth.blogs.nytimes.com/2011/04/25/beyond-the-climate-blame-game/>.

<sup>217</sup> KIRSCH *supra* note 182 at 40-43, 65-70.

<sup>218</sup> see Interview with Senior Official, EPA, *supra* note 70; Interview with Phil Aroneanu, US Campaign Director, 350.org, September 21, 2012.

<sup>219</sup> SALE *supra* note 184 at 17.

<sup>220</sup> Morris *supra* note 169.

<sup>221</sup> GOTTLIEB *supra* note 165 at 76-81.

<sup>222</sup> SALE *supra* note 184 at 15.

<sup>223</sup> *id.* at 15.

<sup>224</sup> GOTTLIEB *supra* note 165 at 81.

<sup>225</sup> GOTTLIEB *supra* note 165 at 157.

<sup>226</sup> MARK DOWIE, *LOSING GROUND: AMERICAN ENVIRONMENTALISM AT THE CLOSE OF THE TWENTIETH CENTURY* 24.

<sup>227</sup> SALE *supra* note 184 at 25-27.

<sup>228</sup> See Coglianese *supra* note 187 at 94.

<sup>229</sup> SALE *supra* note 184 at 51.

<sup>230</sup> See Coglianese *supra* note 187 at 94.

<sup>231</sup> SALE *supra* note 184 at 36.

<sup>232</sup> ANDREWS *supra* note 165 at 248.

<sup>233</sup> *id.*

<sup>234</sup> SALE *supra* note 184 at 59-60.

<sup>235</sup> Henry Waxman explicitly adopted the USCAP Blueprint as his legislative guide; see Joe Romm, *Waxman, Markey, Dingell, and Boucher embrace climate action, praise USCAP proposal*, ThinkProgress, March 30, 2009, available at <http://thinkprogress.org/climate/2009/03/30/203883/waxman-markey-dingell-and-boucher-embrace-climate-action-praise-uscap-proposal/> (providing a copy of the letter sent from Waxman, Markey, Dingell and Boucher to President Obama acknowledging the USCAP proposal as the foundation for their legislation). HCAN, meanwhile, developed the basic public-option policy that became the heart of the healthcare proposals of all three Democratic presidential candidates. See KIRSCH *supra* note 182 at 34-38.

<sup>236</sup> KIRSCH *supra* note 182 at 47-50.

<sup>237</sup> *id.* at 110.

<sup>238</sup> *id.* at 78, 92, 121.

<sup>239</sup> Pooley *supra* note 3 at 419.



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- <sup>240</sup> Specter famously switched from the Republican to the Democratic Party in April 2009.
- <sup>241</sup> KIRSCH *supra* note 182 at 122-140, 150-165.
- <sup>242</sup> *id.* at 50.
- <sup>243</sup> Interview with Senior Executive, NRDC, *supra* note 36.
- <sup>244</sup> See *Early Release of Selected Estimates Based on Data from 2008 National Health Interview Survey*, Center for Disease Control and Prevention, 6/24/2009, available at <http://www.cdc.gov/nchs/nhis/released200906.htm>, noting that 44.8 million Americans lack healthcare, approximately 15% of the American public.
- <sup>245</sup> See KIRSCH *supra* note 182 at 43.
- <sup>246</sup> Pooley *supra* note 3 at 156.
- <sup>247</sup> Greenpeace, *Broad Coalition Criticizes Climate Bill*, May 22, 2009 available at <http://www.greenpeace.org/usa/en/media-center/news-releases/broad-coalition-criticizes-climate/>.
- <sup>248</sup> See Glenn Hurowitz, *Are Environmentalists responsible for climate failure?*, Grist, July 28, 2010, available at <http://grist.org/article/tough-love-for-obama/> (discussing the lack of pressure exerted on President Obama by the environmental movement and progressive political activists in general).
- <sup>249</sup> While many of the big green groups like NRDC and EDF claim large memberships, this membership is largely defined by financial contributions, rather than active participation. For an extended discussion of the difference between traditional membership groups and their modern equivalents, see THEDA SKOCPOL, DIMINISHED DEMOCRACY: FROM MEMBERSHIP TO MANAGEMENT IN AMERICAN CIVIC LIFE, Chapter 4.
- <sup>250</sup> Pooley *supra* note 3 at 196-197.
- <sup>251</sup> See POOLEY *supra* note 3 at 378-381.
- <sup>252</sup> Interview with Liz Butler *supra* note 158.
- <sup>253</sup> See *1 Sky Annual Report, Year Two, October 2008-September 2009* at 8, available at <http://www.1sky.org/files/1Sky-Annual-Report-Year-Two-October-2008-September-2009.pdf>
- <sup>254</sup> *id.* See also the 1SKY Press Room, available at <http://www.1sky.org/pressroom/news>.
- <sup>255</sup> See Interview with Matt Oberhoffner, longtime environmental organizer, June 8, 2012.
- <sup>256</sup> See Julie Kosterlitz, *Inside the Energy Bill War Room*, National Journal, March 20, 2010, available at [http://www.nationaljournal.com/njmagazine/ll\\_20100320\\_3010.php](http://www.nationaljournal.com/njmagazine/ll_20100320_3010.php).
- <sup>257</sup> *id.* See also POOLEY *supra* note 3 at 419-420 (discussing CEW).
- <sup>258</sup> Phil Taylor, *Student activists hit Washington to push for climate bill*, N.Y. Times Greenwire, February 27, 2009 available at <http://www.nytimes.com/gwire/2009/02/27/27greenwire-student-activists-hit-washington-to-push-for-em-9912.html>.
- <sup>259</sup> Jason Mark, *Thousands Storm Capital Hill in Largest Protest Against Global Warming*, AlterNet, March 3, 2009 available at [http://www.alternet.org/environment/129728/a\\_new\\_epoch\\_for\\_environmentalism:\\_massive\\_climate\\_change\\_action\\_proves\\_a\\_turning\\_point/](http://www.alternet.org/environment/129728/a_new_epoch_for_environmentalism:_massive_climate_change_action_proves_a_turning_point/).
- <sup>260</sup> For 2009 numbers, see *Earth Day 2009*, Earth Day Network, available at <http://www.earthday.org/campaign/earth-day-2009-green-generation%E2%84%A2>. For

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2010 numbers, *see* Janie Lorber, N.Y. Times, *Thousands Gather on the Mall for Earth Day*, Aril 25, 2010, available at <http://green.blogs.nytimes.com/2010/04/25/thousands-gather-on-the-mall-for-earth-day/>.

<sup>261</sup> *See e.g.* J. Freedom du Lac, Wash. Post, *Earth Day Celebration Fills Washington's Mall with Music and Speeches*, April 20, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/19/AR2009041902087.html> (describing the event as a “environmental-themed party”); Chris Richards, Wash. Post, April 26, 2010, *Earth Day Climate Rally features music, speeches and an assist from Mother Nature*, available at <http://www.washingtonpost.com/wp-dyn/content/story/2010/04/25/ST2010042503534.html?sid=ST2010042503534> (discussing Earth Day largely in terms of musical appearances and a festival-like atmosphere and only touching briefly on political elements).

<sup>262</sup> KIRSCH *supra* note 182 at 33.

<sup>263</sup> Interview with Gerald Torres, Bryant Smith Chair in Law, University of Texas at Austin School of Law, October 24, 2012.

<sup>264</sup> *See, e.g.,* Coglianese *supra* note 187; SALE *supra* note 184 at 54-57; GOTTLIEB *supra* note 165 at 161-217; ANDREWS *supra* note 165 at 237-242.

<sup>265</sup> *See* Appendix 6.

<sup>266</sup> *See* BRULLE *supra* note 184 at 193.

<sup>267</sup> *id.* at 185-193

<sup>268</sup> For the Nature Conservancy, Natural Resources Defense Council, Environmental Defense Fund and World Resources Institute, *see supra* note 223. For Greenpeace Inc. USA, *see Greenpeace USA Annual Report 2010-2011* available at [http://www.greenpeace.org/usa/Global/usa/planet3/PDFs/ANNUAL\\_REPORT2010-11.pdf](http://www.greenpeace.org/usa/Global/usa/planet3/PDFs/ANNUAL_REPORT2010-11.pdf); For World Wildlife Fund, *see 2011 990 Report*, available at <http://worldwildlife.org/about/financials>. For Wildlife Conservation Society, *see Wildlife Conservation Society Annual Report 2011* available at <http://www.wcs.org/files/pdfs/wcs-2011-annual-report.pdf>. For National Wildlife Federation, *see National Wildlife Federation Annual Report 2011* available at <http://www.nwf.org/Who-We-Are/Annual-Report.aspx>; for National Audubon Society, *see National Audubon Society Annual Report 2011* available at <http://www.audubon.org/2011-annual-report>. For Sierra Club Foundation, *see Sierra Club Foundation Annual Report 2011* available at <http://www.sierraclubfoundation.org/sites/sierraclubfoundation.org/files/2011-TSCF-Annual-Report.pdf>.

<sup>269</sup> *See* Coglianese *supra* note 187 at 98.

<sup>270</sup> *id.* at 116.

<sup>271</sup> *See* Jane Mayer, *Taking it to the Streets*, New Yorker, November 28, 2011, available at [http://www.newyorker.com/talk/comment/2011/11/28/111128taco\\_talk\\_mayer#ixzz1leftWuSRW](http://www.newyorker.com/talk/comment/2011/11/28/111128taco_talk_mayer#ixzz1leftWuSRW).

<sup>272</sup> Matt Bai, *Taking the Hill*, N.Y. Times, June 2, 2009, available at [http://www.nytimes.com/2009/06/07/magazine/07congress-t.html?\\_r=1&partner=rss&emc=rss](http://www.nytimes.com/2009/06/07/magazine/07congress-t.html?_r=1&partner=rss&emc=rss).

<sup>273</sup> *See supra* notes 47-48 and accompanying text; POOLEY *supra* note 3 at 417.

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- <sup>274</sup> See BARBARA KELLERMAN, *THE POLITICAL PRESIDENCY* 50.
- <sup>275</sup> *id.* at xi.
- <sup>276</sup> KINGDON *supra* note 119.
- <sup>277</sup> See KELLERMAN *supra* note 281 at 203-204 (discussing the importance of presidential commitment), 185-219 (discussing Carter's efforts more broadly).
- <sup>278</sup> See RICHARD NEUSTADT, *PRESIDENTIAL POWER* 42
- <sup>279</sup> *Id.* It is important to note in this regard the publicly known disinterest of Rahm Emanuel in pushing for climate reform. See Peter Baker, *THE LIMITS OF RAHMISM*, N.Y. Times, March 8, 2010, available at <http://www.nytimes.com/2010/03/14/magazine/14emanuel-t.html>.
- <sup>280</sup> See ALTER *supra* note 33 at 95-96.
- <sup>281</sup> See POOLEY *supra* note 3 at 359-361.
- <sup>282</sup> See ALTER *supra* note 33 at 261
- <sup>283</sup> See POOLEY *supra* note 3 at 417.
- <sup>284</sup> See ALTER *supra* note 33 at 260.
- <sup>285</sup> See Lizza *supra* note 2.
- <sup>286</sup> KIRSCH *supra* note 182 at 135-136.
- <sup>287</sup> For a polemical discussion of Obama's failure of messaging on climate, see Joe Romm, *The Unbearable Lameness of Being Rahm and Axelrod*, ThinkProgress, available at <http://thinkprogress.org/climate/2010/06/13/206217/the-unbearable-lameness-of-being-rahm-and-axelrod/>.
- <sup>288</sup> Interview with former Staff Member, White House Domestic Policy Council, November 4, 2012 (source requested anonymity).
- <sup>289</sup> See, e.g., Tim Dickinson, *Climate Bill, R.I.P.*, Rolling Stone, July 21, 2010, at <http://www.rollingstone.com/politics/news/climate-bill-r-i-p-20100721>; Andrew Revkin, *With No Obama Push, Senate Punts on Climate*, N.Y. Times (July 22, 2010), <http://dotearth.blogs.nytimes.com/2010/07/22/with-no-obama-push-senate-punts-on-climate/>; Joe Romm, *The Failed Presidency of Barack Obama*, Grist, (July 22, 2010, <http://grist.org/article/2010-07-22-the-failed-presidency-of-barack-obama/>); Editorial, *With a Whimper*, N.Y. Times, July 23, 2010, <http://www.nytimes.com/2010/07/23/opinion/23fri1.html>.
- <sup>290</sup> See ALTER *supra* note 33 at 33.
- <sup>291</sup> See JACOBS & SKOCPOL *supra* note 63 at 32-33.
- <sup>292</sup> *id.* at 31.
- <sup>293</sup> *id.* at 31-34, 45.
- <sup>294</sup> KIRSCH *supra* note 182 at 102.
- <sup>295</sup> See ALTER *supra* note 33 at 33.
- <sup>296</sup> KIRSCH *supra* note 182 at 100.
- <sup>297</sup> See *supra* note 30 and accompanying text.
- <sup>298</sup> See ALTER *supra* note 33 at 92-115 (discussing Obama's growing commitment to healthcare reform).
- <sup>299</sup> Baker *supra* note 286.
- <sup>300</sup> JACOBS and SKOCPOL *supra* note 63 at 37, 41, 112.
- <sup>301</sup> R. Kent Weaver, *Polls, Priming and the Politics of Welfare Reform* in MANZA, COOK & PAGE *supra* note 65 at 108.

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<sup>302</sup> Interview with Staff Member, White House Domestic Policy Council, *supra* note 296.

<sup>303</sup> Revkin *supra* note 209.

<sup>304</sup> See Eric Pooley, *In Wreckage of Climate Bill, Some Clues for Moving Forward*, The Climate War Blog, (July 29, 2010), available at <http://www.ericpooley.com/2010/07/29/in-wreckage-of-climate-bill-some-clues-for-moving-forward/> (blaming “Professional Deniers” as the #1 cause of the failure of the climate bill); Joe Romm, *The Failed Presidency of Barack Obama, Part 2*, ThinkProgress, (November 4, 2010), available at (<http://thinkprogress.org/climate/2010/11/04/206982/the-failed-presidency-of-barack-obama-2/?mobile=nc>), (suggesting that “the anti-science crowd and their disinformation campaign and associated think tanks, pundits, and right-wing media deserve about 60% of the blame” for the failure of the climate bill).

<sup>305</sup> GOTTLIEB *supra* note 165 at 108 (discussing Alice Hamilton’s investigation of radium dial painting).

<sup>306</sup> GOTTLIEB *supra* note 165 at 354-355 (discussing a “systematic effort by asbestos industry officials, lasting more than three decades, to control the research...in order to limit industry liabilities.”)

<sup>307</sup> GOTTLIEB *supra* note 165 at 125-126 (discussing the chemical industry’s reaction to the publication of Rachel Carson’s *Silent Spring*).

<sup>308</sup> See PHILIP HILTS, *SMOKESCREEN: THE TRUTH BEHIND THE TOBACCO INDUSTRY COVER-UP*; ROBERT PROCTOR, *GOLDEN HOLOCAUST* (discussing the public relations efforts of tobacco companies generally and, in particular, their efforts to undermine scientific consensus on the harmful health impacts of tobacco use).

<sup>309</sup> These bills were chosen based on Congressional Research Service report classifications where available (108<sup>th</sup>, 109<sup>th</sup> and 110<sup>th</sup> Congresses) and, where not available, on other nonpartisan classifications. See Brent D. Yacobucci and Kyna Powers, *Climate Change Legislation in the 108th Congress*, Congressional Research Service, January 6, 2005; Brent D. Yacobucci, *Climate Change Legislation in the 109th Congress*, Congressional Research Service, August 4, 2006; Jonathan Ramseur and Brent D. Yacobucci, *Climate Change Legislation in the 110th Congress*, Congressional Research Service, January 7, 2008; *Summary of Notable Market-Based Climate Change Bills Introduced in the 111th Congress*, Resources for the Future, available at [http://www.rff.org/Documents/Features/111th%20\\_Legislation\\_Table\\_Graph.pdf](http://www.rff.org/Documents/Features/111th%20_Legislation_Table_Graph.pdf); *111th Climate Change Legislation*, Center for Climate and Energy Solutions, available at <http://www.c2es.org/federal/congress/111>; James E. McCarthy, *Clean Air Issues in the 111th Congress*, Congressional Research Service, December 7, 2010.