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American Environmental Associations in the Age of Climate Change

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I. Overall Public Attitudes toward Global Warming

In contrast to every other developed country, the United States government has refused to accede to the Kyoto Protocol, an international agreement to reduce the emissions of gases, such as carbon dioxide, that contribute to global warming.ⁱ An October 2003 study of over 800 Americans suggested “American support is far below that of” Japanese, Swedish, and British for the proposition that “global warming has been established as a serious problem and immediate action is necessary.”ⁱⁱ

While this might create the impression that Americans either do not believe in or refuse to act to prevent global warming, the reality of American public opinion is more nuanced. Some theorize that perhaps U.S. “politicians [at the national level] have not recognized the support of the American public for action,”ⁱⁱⁱ and “public ambivalence towards climate change may well reflect an expression of frustration fuelled by disempowerment” in the political process.^{iv} This theory is supported by that fact that many political leaders at state and local levels, who may better understand their constituency due to their close proximity, have sensed the public desire for action. As a result, over half the U.S. states “have committed to or are considering mandatory carbon caps.”^v And mayors from 132 cities, including New York, have pledged on behalf of their 29 million constituents to meet the carbon emission reduction targets that would have been assigned to them had the United States adopted the Kyoto Protocol.^{vi}

A more recent survey of 1,000 adult Americans revealed that 70 percent believe they are likely to be personally affected by the effects of global warming in the next ten years, as compared to 85 percent of adult Europeans.^{vii} CBS News, with a similar sample size study, reported that 70 percent of Americans believe global warming is having a

“serious impact now.”^{viii} A July 2007 study by Yale University, Gallup, and the ClearVision Institute found that 62 percent of Americans “believe that life on earth will continue without major disruptions only if society takes immediate and drastic action to reduce global warming[;]” and 69 percent believe global warming is caused by human activities, perhaps in conjunction with naturally occurring events.^{ix} 67 percent of Americans believe this is a “very serious” problem, while 20 percent believe it is “somewhat serious.”^x While 71 percent of Americans opposed additional electricity taxes and 67 percent opposed gasoline taxes,^{xi} nearly 82 percent would be willing to pay a higher electric bill of up to \$100 per year if there was legislation requiring utilities to produce at least 20 percent of their power from renewable energy.^{xii} This latter result is consistent with a nationwide Harris Poll conducted in October 2007, where 81 percent of the 1052 American adults surveyed agreed that, “[a]s the world’s leading industrial country, the United States needs to set the lead when it comes to controlling greenhouse gases and pollution.”^{xiii} And “[n]early three-quarters of U.S. adults agree that protecting the environment is important and standards cannot be too high[.]”^{xiv}

Communications researchers at George Mason and Yale Universities suggest that “there are diverse audiences within the American public, each predisposed to interpret global warming . . . in different ways.”^{xv} Three categories of Americans likely to be most responsive to climate change issues are: “the Liberal Left,” “Alarmists,” and “Mainstream Americans.”^{xvi} These same researchers posit that the two groups of Americans with “relatively low perceptions of risk associated with climate change” are “Optimists,” and “The Religious Right.”^{xvii} Religiosity alone, however, is an insufficient predictor of concern because Alarmists also tend to be religious.^{xviii}

While Americans who identified themselves as Democrats were more likely to vote for political candidates based on their environmental record than self-identified Republicans, members of both parties were willing engage in conserving energy at home and recycling.^{xix} Roughly 60 percent of all Americans “believed that ‘the actions we take can prevent global warming from becoming more severe’[.]”^{xx}

II. From Opinion to Action: The Role of Associations

In addition to membership in political parties (i.e., Democrat and Republican), and individual characteristics (i.e., Alarmist vs. Liberal Left vs. Religious Right), Americans often form or express their viewpoints through participation in civil society.^{xxi} Indeed, Lipset describes participation in civil society as “[c]entral to th[e] American conception of individualism.” This phenomena stretches back at least as far as the 1830s, when Alexis De Toqueville observed that it is through such associations that “[f]eelings and opinions are recruited, the heart is enlarged, and the human mind is developed . . . by the reciprocal influence of men upon one another.”^{xxii}

This paper examines a segment of U.S. civil society affected by, and thus interested in, climate change policy: environmental non-governmental organizations (NGOs). While civil society also contains think-tanks, scientific, and religious organizations, these are often allied with or opposed to environmental NGOs on the issue of climate change. Thus, in order to truly understand the nuances of American views on climate change, one has to focus upon the environmental components of civil society.

This article focuses solely on American society; thus, it does *not* examine the role of the international or purely scientific organizations, such as the Intergovernmental Panel on Climate Change (the “IPCC”), established in 1988 by the World Meteorological

Organization and the United Nations Environment Programme,^{xxiii} or the National Academy of Sciences and National Research Council.^{xxiv} Further, the article focuses on the civil society representation of real people, as opposed to legal people (i.e., corporations), in civil society, the paper limits its discussion to NGOs which are supported, at least in part, by individuals. As a result the paper excludes NGOs largely focused on representing businesses in the climate change debate, ranging from those actively supporting climate change legislation, (e.g., The U.S. Climate Action Partnership,^{xxv} the Pew Center on Climate Change’s Business Environmental Leadership Council,^{xxvi} and the Business Council for a Sustainable Energy Future^{xxvii}) to those actively opposing it (e.g., the Committee for a Constructive Tomorrow,^{xxviii} the Competitive Enterprise Institute,^{xxix} and The Global Climate Coalition^{xxx}). The article is limited to a discussion of NGOs focused exclusively on the environment, despite the fact that many established generalist think-tanks (e.g., Brookings,^{xxxi} AEI,^{xxxii} Heritage Foundation,^{xxxiii} Cato Institute,^{xxxiv} and Heartland Institute^{xxxv}) have also devoted significant resources to the issue of climate change. Lastly, due to publication length constraints, the author is precluded from a discussion of the role and stance of organized labor^{xxxvi} and religious organizations in the climate change debate, despite competing observations that Religious Right “generally do not perceive climate change as a significant threat,^{»xxxvii} yet “humanitarian agencies such as Christian Aid are becoming increasingly concerned with climate change, particularly with impacts such as the effects of extreme weather conditions on the world's poor.^{»xxxviii}

III. Environmental Civil Society

On average, 14 percent of Americans consider themselves to be an “active participant” in the environmental movement, while 47 percent self-identify as “sympathetic [to the movement], but not active” in it.^{xxxix} Of the remaining Americans, 32 percent consider themselves to be “neutral” and 6 percent are “unsympathetic” to the environmental movement.^{xi} In keeping with these personal preferences, it is not surprising that 66 percent of Americans believe the environmental movement has “probably done more good than harm,” while 31 percent of Americans disagree.^{xli}

“The legitimacy of NGOs as environmental actors emerges from their claim to represent a sizeable body of public opinion that is not adequately represented elsewhere in the policy process. This claim is bolstered by large paid memberships, the results of public surveys, [and] support for direct actions . . .”^{xlii} Environmentally-oriented NGOs typically seek to influence policy through three mechanisms: “developing creative policy solutions; knowledge construction/coalition building; and pressure/lobbying.”^{xliii}

“Contrary to popular opinion that characterizes the ‘Green Lobby’ as a monolithic force in American politics, all environmental groups are not alike; neither are environmentalists nor their motivations for belonging to such groups.”^{xliv} Further, NGOs employ varied tactics in their pursuit of environmental preservation. One common tactic utilized by these groups is litigation and the pursuit of enforcement of existing laws to change the behavior of those deemed to be despoiling the environment. A second commonly employed tactic is to seek to influence corporations and governments to act in a more environmentally-friendly manner through public pressure, also known as direct action. A third tactic is to advise policymakers about how to craft the most efficient

environmental regulations and how various policy alternatives will impact both the environment and other interested constituencies, such as particular sectors of industry. Because climate change policy is still in a nascent stage of development, with few laws to enforce and few standards to pressure corporations to uphold,^{xlv} NGOs providing policy advice are the most influential in the climate change debate at present.

A. The Litigators

“To some environmental activists, ‘litigation is the most important thing the environmental movement has done’ since the early 1970s.”^{xlvi} NGOs with a litigation orientation include the Natural Resources Defense Council (NRDC) and Earthjustice.^{xlvii} Most NGO environmental lawsuits are designed “to overcome obstacles to effective public enforcement, such as limited agency resources and the structural risk of agency underenforcement.”^{xlviii} However such suits often provide the added benefit of “enforcement innovations, many of which are later adopted and used by public enforcers [and lead to] . . . the promotion of democratic values.”^{xlix}

Earthjustice was formerly called the Sierra Club Legal Defense Fund and a significant portion of its initial budget was provided by the Ford Foundation. At the time of their founding, “[f]inancially, most of the public interest law groups [we]re largely dependent on foundation support and whatever money they c[ould] scrape up from wealthy contributors.”¹ The Ford Foundation also supported the foundation of NRDC and the Environmental Law Institute (ELI), which provides “non-partisan research and education center working to strengthen environmental protection by improving law and governance worldwide.”^{li}

NRDC, described as “[t]he [environmental] movement's largest and most aggressive legal advocate[,]”^{lii} develops and litigates its own cases – thus often simultaneously serving both as *client* and *attorney*.^{liii} It has broadened its support base to 1.2 million members, who funded 86 percent of its \$75 million operating budget in 2007 through NRDC membership fees and contributions.^{liv} As NRDC has shown positive results from its pro-environmental litigation efforts, it has generated sufficient popular support that it is now far less dependent on foundation support, which represented just 12 percent of its budget in 2007.^{lv} With its larger budget, NRDC has branched out by adding scientists and environmental specialists to its staff, and now has offices in New York, Washington, Los Angeles, San Francisco, Chicago, and Beijing.^{lvi}

Unlike NRDC, Earthjustice positions itself solely as an attorney representing third party environmental NGO clients: “the leading nonprofit environmental law firm in the country.”^{lvii} Since it left the Sierra Club umbrella, Earthjustice has not been tied exclusively to any one particular environmental NGO. From its founding in 1971 to the present, Earthjustice has provided legal representation to over 600 environmental organizations,^{lviii} including NRDC.^{lix} While it maintains a legislative/lobbying practice,^{lx} Earthjustice, with just 70,000 members,^{lxi} is a significantly smaller organization than NRDC. Only 56 percent of Earthjustice’s \$23 million 2007 budget was funded by contributions from individuals, with another 15 percent from foundations and ten percent from court awards of legal fees for litigation victories.^{lxii}

Most environmental litigation is directed toward enforcing existing environmental protection regulations. The target is typically a corporation or individual acting in contravention to the regulation or a government agency that is alleged to be failing to

implement the regulation as Congress intended in its enabling statute (e.g., the Clean Air Act^{lxiii}). In the area of climate change, there has been scant relevant legislation for groups like Earthjustice to seek to enforce in court. As a result, the primary climate change litigation efforts have been legal actions seeking to interpret existing regulations and common law doctrines to the problem of climate change. For example, Earthjustice represented the Sierra Club in a lawsuit seeking to require the EPA to develop regulations restricting the emission of greenhouse gases (GHGs) under the Clean Air Act because such emissions “endanger public health and welfare.”^{lxiv} Other lawsuits have tried to apply the common law doctrine of nuisance to the global warming issue.^{lxv} For example, a lawsuit was brought against five public power utilities to cap and reduce their carbon dioxide emissions, alleging these emissions were a public nuisance.^{lxvi}

B. The Direct Actors

Many environmental NGOs are Direct Actors: they focus their efforts on directly changing the behavior of corporations and individuals who are contributing to environmental degradation, without first resorting to pursuit of legal action. Some NGOs pursue cooperative direct actions, while others take a more adversarial approach. Often a blend of both is required.^{lxvii} If an adversarial approach is taken, the companies targeted for action are selected based on the degree to which each company’s actions is consequential for the natural environment; and the extent to which the NGO is certain that “the firm is the source of an environmental impact[.]”^{lxviii} When the cooperative approach is employed, companies targeted are often those with the most previous interaction with that particular NGO, or the company that is largest and most influential

in its field.^{lxi} The Environmental Defense Fund (EDF) and World Wildlife Fund (WWF) often take a more cooperative approach than an organization like Greenpeace.

Environmental Defense Fund (EDF)

The Environmental Defense Fund, founded in 1967 by scientists and lawyers, began as another environmentally-oriented public interest law firm serving as both client and attorney. Its unofficial motto was “sue the bastards!”^{lxx} During the late 1970s, EDF began to shift its focus toward working more closely with industry to develop “what the organization called ‘win-win strategies.’”^{lxxi} In a *Wall Street Journal* editorial, EDF’s president proclaimed that “[t]he new environmentalism does not accept 'either-or' as inevitable[,]”^{lxxii} implying that cooperative solutions that are mutually-satisfactory to both environmental and economic interests might be possible. This is represented by the organization’s current mottoes: “Finding ways that work” and “We partner with businesses, governments and communities to find practical environmental solutions.”^{lxxiii}

Along with this shift in tactics came an emphasis on market-oriented approaches to environmental protection, as compared to regulatory approaches.^{lxxiv} The organization “made a commitment not only to oppose ill-conceived policies, but also to propose alternatives . . . to work directly with business, government and community groups, forging solutions that make sense for all.”^{lxxv} A Greenpeace official commented that EDF “ha[s] carved out a space that no one else has, dancing with companies, while groups like Greenpeace tend to dance on companies.”^{lxxvi}

EDF is particularly well known for advocating the cap-and-trade system to reduce sulfur dioxide and nitrous oxide emissions that cause acid rain. This “became the centerpiece of the [George H.W.] Bush administration's clean air package” in 1991.^{lxxvii}

Because utilities favored the cap-and-trade system of regulation proposed by EDF, this made many in the environmental community suspicious. According to the EPA chief at the time, William Reilly, EDF “was taking some serious risks” by cooperating with business.^{lxxviii} *The Economist* described the program, which collectively required northeast power plants to cut sulfur dioxide emissions in half, while remaining flexible on the means of doing so, as “the greatest green success story of the past decade.”^{lxxix} A result of the program was that power “plants cut their pollution faster than expected, at a fraction of the predicted cost.”^{lxxx}

EDF is guided by a star-studded Board of Trustees, including academics (e.g. professors from State University of New York at Stony Brook, Johns Hopkins University Bloomberg School of Public Health, Princeton University, Duke University, and Oregon State University), philanthropists (e.g. Joanne Woodward, Artistic Director of the Westport Country Playhouse; and Thomas H. Kean; Chairman of Robert Wood Johnson Foundation); and well-established financiers (from Morgan Stanley; Bear, Stearns & Co.; Tiger Management, LLC; Ranieri & Co., Inc.; Silver Lake Partners; The Carlyle Group; Sutter Hill Ventures; Duquesne Capital Management; etc.).^{lxxxii} Interestingly, the Board includes no executives from heavy industry and just two from a company outside the service industries (i.e., finance, law, and talent management): Roger Enrico, the Chairman of DreamWorks Animation, formerly the Chairman and CEO of Pepsico; and Sam Walton Jr., a member of the Wal-Mart founder’s family.^{lxxxii} The financiers serve as wealthy benefactors for EDF without the risk that their own company engages in industrial activity that falls afoul of environmental regulations that EDF is seeking to enforce. As the *Wall Street Journal* observed, “[i]t turns out there are a lot of rich

environmentalists, and they're a lot more comfortable with Environmental Defense's approach than with more confrontational outfits.^{lxxxiii}

To reduce potential conflicts of interest, EDF limits corporate donations to 3 percent of its total budget.^{lxxxiv} It will not accept a donation from any corporation that is in “direct conflict with [its] environmental protection objectives or activities,” already engaged in an EDF “program activity or partnership,”^{lxxxv} or in the following industries: automobiles, chemicals, electric utilities, forestry, fishing, mining, nuclear power, oil/gas, pulp/paper, tobacco, waste management, or weapons.^{lxxxvi}

In addition to its wealthy board and occasional corporate sponsors, EDF has support from over 500,000 members and an annual budget of \$73.8 million in 2007, a 23 percent increase from the prior year.^{lxxxvii} Individual donors provide 56 percent of EDF’s budget and foundation grants provide 21 percent.^{lxxxviii} EDF’s current staff of 300, which “boasts more Ph.D. scientists and economists on staff than any similar organization[,]”^{lxxxix} is located in New York, Washington, DC, Raleigh, Boulder, Austin, Boston, Los Angeles, Sacramento, San Francisco, Bentonville, Arkansas, and Beijing.^{xc} EDF’s President, Fred Krupp, has also served as chairman of the Green Group, a national coalition of 30 leading environmental organizations.^{xcii}

Direct actions taken by EDF in the corporate world include “cutting a deal with McDonald's to reduce its [polystyrene] waste.”^{xciii} EDF’s approach was a stark contrast to the approach used by the Citizens Clearinghouse for Hazardous Waste, which established a “‘Ronald McToxic Campaign’ consisting of restaurant picketers and an organized effort to mail [plastic hamburger packaging] clamshells back to [McDonald’s] Oak Brook headquarters.”^{xciiii} “While other green groups were loudly campaigning to get

McDonald's to get rid of polystyrene clamshell sandwich boxes in 1990, . . . [EDF] knocked on [McDonald's] . . . front door and ended up with a 43-point agreement to help McDonald's reduce its solid waste, blindsiding the other [environmental] groups and attracting the national spotlight.^{xxciv} As a result, McDonald's described EDF as "probably the best nonprofit to find the intersection between profit and planet."^{xxcv}

Other direct actions by EDF include working with Federal Express "to design a fuel-efficient, low-emission truck."^{xxcvi} The company estimates that the new hybrid trucks get 57 percent improved fuel economy and dramatically cut emissions.^{xxcvii} EDF also withheld "a green stamp of approval on a \$32 billion takeover of Texas electric utility TXU" until "the new owners abandoning plans to build eight coal-fired power plants[.]"^{xxcviii} TXU's concession to EDF came about only after EDF, NRDC, and others "created the *Stoptxu.com* Web site, which put out regular electronic newsletters on the TXU plans and built a national constituency opposed to the deal. They also took TXU to court."^{xxcix} Lastly, at EDF's own expense, it "opened an office near Wal-Mart's corporate headquarters in Bentonville, Ark., to help the world's biggest retailer go green with energy efficiency and packaging reduction programs."^{xc} For example, through EDF's advice to "turn off engines while trucks are being loaded, Wal-Mart is reducing emissions by an amount equal to taking 20,000 cars off the road."^{xc}

With regard to climate change, EDF's "goal is to cut U.S. emissions 80% by 2050."^{xcii} Building on its expertise in working with the corporate world, EDF reached agreement with seven large energy and manufacturing corporations (BP Amoco PLC, Royal Dutch/Shell Group, DuPont Co., Suncor Energy Inc., Ontario Power Generation Inc., Alcan Aluminum Ltd. and the French aluminum company Pechiney SA) "to

voluntarily reduce emissions of carbon dioxide and other heat-trapping ‘greenhouse’ gases . . . reduc[ing] their combined emissions of greenhouse gases” by 90 million metric tons by 2010.^{ciii} Both EDF and the companies believe such emissions reductions can be made “without heavy economic sacrifices, by adopting more efficient practices and using incentives that financially reward cleanup investments.”^{civ} The companies will establish a method of trading emission reductions among themselves so that any benefit derived from excess emissions reductions by one may be felt by all.^{cv}

More recently, EDF “signed a deal with General Electric, DuPont, Caterpillar and other major companies to substantially reduce greenhouse gas emissions . . . 60% to 80% from current levels by 2050, with interim targets at 5, 10 and 15 years.”^{cvi} However another environmental group, the Sierra Club, criticized EDF’s approach, “saying it offered only modest reductions in greenhouse gases while undercutting efforts to write strong regulations on emission controls as part of the 1997 Kyoto treaty on climate change.”^{cvii}

EDF is also leveraging its in-house scientific expertise on the policy front. It “played a pivotal role in drafting [California’s climate change] bill and securing broad support that was critical to its passage,” according to Fabian Nunez, Speaker of the California Assembly.^{cviii} The Environmental Defense Action Fund was setup as a separate organization for additional legislative spending, which is capped at \$250,000 per year for EDF, as compared to “opponents of global warming [who] spend \$1 million per day.”^{cix}

Rather than harming the economy, EDF believes that emissions reductions will likely be a net gain to the gross national product through increased sales of new

technologies being developed to reduce emissions and provide emission-less energy (e.g., solar, wind power, wave power, etc.).^{cx} However “[c]ompanies will not cut their global warming pollution from new or existing plants until there is a legal limit requiring them to do so.”^{cxⁱ} It is EDF’s position that only through legislation will our “collective energy, intellect, and investment [will be focused] on the problem.”^{cxⁱⁱ} The ancillary short-term benefits of reducing greenhouse gas emissions include “reduce[d] air pollution, . . . [and reduced] dependence on oil from unstable parts of the world.” Decreasing dependence can also “choke[s] off funding to many who wish harm to civilized nations.”^{cxⁱⁱⁱ}

World Wildlife Fund (WWF)

The World Wildlife was founded in 1961,^{cx^{iv}} and now has a global membership in excess of five million and a U.S. membership of 1.2 million.^{cx^v} While the organization’s roots are in protecting endangered species and their habitats, it has expanded its focus over the years to other environmental threats, such as climate change,^{cx^{vi}} which it describes as “the single biggest threat to our environment today.”^{cx^{vii}}

WWF’s Climate Savers Programme sets up direct action partnerships with companies to set absolute goals to reduce their emissions, without the purchase of emission offsets.^{cx^{viii}} Climate Savers partnerships focus on:

- increasing product energy efficiency
- increasing the factory or business process energy efficiency
- developing energy saving products
- increasing transport efficiency
- using cleaner or renewable energy

- “develop[ing] and implement[ing] carbon risk analysis tools for business decisions.”^{cxxix}

Thus far, participants in the programme include major multinational companies such as Hewlett-Packard, IBM, Johnson & Johnson, Nike, Nokia, Novo Nordisk, Polaroid, Sony, and Tetra Pak.^{cxx} WWF is helping build emissions reductions strategies into the companies’ business plans.^{cxxi} “For Nike, this meant purchasing green power to cover 20% of its electricity, installing wind turbines at its European distributorship and taking emissions below 1998 levels - all of which the company accomplished with WWF’s help.”^{cxxii} Johnson & Johnson has already reduced its emissions to 11.5 percent below 1990 levels “by investing in green energy and resource savings, earning the company \$30 million in the past ten years.”^{cxxiii} All of the agreements between WWF and companies in the Climate Savers Programme are available for public review,^{cxxiv} which increases the public commitment of the companies. WWF also takes the unique step of encouraging its members to send thank you notes to the companies participating in the programme.^{cxxv}

As will be discussed in the section below, another role that an NGO can play is educating and advising policymakers.^{cxxvi} In this regard, “WWF has commissioned relatively weighty reports on the effects of climate change and biodiversity and extreme weather events.”^{cxxvii}

Greenpeace

Greenpeace is one of the most widely known international environmental activist organizations, renowned for both its grassroots organizing and direct, but non-violent interference with corporate activities deemed to be harming the environment.

Greenpeace began when a small group of environmental activists in Vancouver, Canada chartered a fishing boat to “bear witness’ to US underground nuclear testing at Amchitka, a tiny island off the West Coast of Alaska[.]”^{cxxxviii} Since that time, its boats have chased Japanese whaling fleets,^{cxxxix} French nuclear tests,^{cxxx} and educated local people about clean energy.^{cxxxi}

Greenpeace is entirely member-supported and does not accept government or corporate funding and refuses to endorse political candidates.^{cxxxii} As of March 2008, Greenpeace, which maintains its world headquarters in the Netherlands, reported 250,000 members in the United States and 2.5 million members worldwide.^{cxxxiii}

In the area of global warming, Greenpeace has taken action to the streets by organizing Mommy Meetups and Stroller Marches^{cxxxiv} to Congress. Additionally, it joined with Friends of the Earth to denounce the Lieberman-Warner Climate Change bill as inadequate in the scope of its reductions and too generous to existing polluters.^{cxxxv} Greenpeace members have also chained themselves to ships to prevent them from delivering coal to China,^{cxxxvi} and broken through a maritime exclusion zone at a recent G-8 summit with a banner saying “G-8, Act Now”, while being pursued by German police speedboats.^{cxxxvii}

In addition to its activist efforts, Greenpeace also issued the “Pacific in Peril” report,^{cxxxviii} “which reviews the biological, economic and social impacts [of climate change] on Pacific coral reefs[.]”^{cxxxix} and multiple case studies about the impact of climate change on developing countries like India.^{cxl}

C. One Man’s Lobbyist is Another’s Policy Advisor

Some environmental NGOs are making an “explicit effort . . . to be part of the epistemic community, employing scientific arguments and methods to convey their message.”^{cxli} Two such groups actively involved in climate change policy are the World Resources Institute and Resources for the Future. Both are in favor of legislation to provide extensive assistance to policymakers considering drafting climate change legislation. Groups involved in direct action, such as NRDC and EDF, have also leveraged their in-house scientific and legal expertise to play a similar role.^{cxlii}

World Resources Institute (WRI)

The World Resources Institute describes itself as “an environmental think tank that goes beyond research to find practical ways to protect the earth and improve people's lives.”^{cxliii} Within the realm of climate change, it has the twin foci of preventing “further harm due to emissions,” and helping both “humanity and the natural world adapt to unavoidable climate change.”^{cxliv}

WRI was founded in 1982 with a \$15 million grant from the John D. and Catherine T. MacArthur Foundation to address “global environmental and resource issues” based on “research and analysis [that] had to be both scientifically sound and politically practical[,]” with the goal of getting “the attention of the key decision-makers in both the public and private sectors.”^{cxlv} WRI’s first President was Chairman of President Carter’s Council on Environmental Quality and a co-founder of the NRDC, the aforementioned prominent environmental litigation NGO.^{cxlvi} His successor, WRI’s current president, hailed from NRDC as well.^{cxlvii} Current funding for WRI comes from many leading companies (e.g., Citibank, Coca-Cola, Google, Starbucks, ABN AMRO, Shell, Alcoa, AIG, Bank of America, BP, Bristol-Myers Squibb, Caterpillar, Dow

Chemical, DuPont, Kodak, General Motors, Goldman Sachs, IKEA, Intel, Procter & Gamble, Levi Strauss, etc.) and foundations (e.g., Ford Foundation, Hewlett Foundation, McArthur Foundation, Packard Foundation, Pew Charitable Trusts, Rockefeller Brothers Fund), as well as wealthy individuals.^{cxlviii} Overall, corporations provide 32 percent of WRI's 2007 budget of \$23 million, while foundations provide 11 percent and the United States and other governments and international sources provide 42 percent.^{cxlix}

WRI's Board of Directors include well-known former political leaders, ranging from Al Gore to William Ruckelshaus, the first ever head of the EPA, to Fernando Henrique Cardoso, the Former President of Brazil, and Ngozi Okonjo-Iweala, the Former Minister of Finance of Nigeria.^{cl} Corporate representation on WRI's board include representatives of Unilever N.V., Wal-Mart, Caterpillar, Inc., Godrej & Boyce Manufacturing Company (one of India's largest engineering and consumer products company), and Lehman Brothers.^{cli} Academic board members include faculty and administrators from Wheaton College, INCAE Business School in Costa Rica, The University of Michigan Business School, Qinghua University in China, the National University of Mexico, and the Yale School of Forestry and Environmental Studies.^{clii} Frances Beinecke, the President of the Natural Resources Defense Council (NRDC) also sits on the Board.^{cliii}

WRI's climate change activities include:

- developing a method for registering and tracking greenhouse gas emissions as an “accounting tool for government and business leaders to understand, quantify, and manage greenhouse gas emissions.”^{cliv}

- facilitating the standardization and interconnection of local, national, and international emissions markets and proliferating lessons learned from one market to the others;^{clv}
- helping corporations develop internal infrastructure measure to greenhouse gas emissions measurement, and purchase more clean energy;^{clvi}
- comparing and explaining the widely varying cost estimate of proposed climate change legislation.^{clvii}

Resources For the Future (RFF)

Founded in 1952 to “examine[] whether the United States was becoming overly dependent on foreign sources of important natural resources and commodities[,] RFF became the first think tank devoted exclusively to natural resource and environmental issues.”^{clviii} As an independent, non-partisan organization,^{clix} RFF draws upon the expertise of “the business community, environmental advocacy organizations, former policymakers, including federal and state environmental officials as well as elected representatives, and pre-eminent scholars.”^{clx} Accordingly, the organization’s directors hail from corporate America (i.e., Goldman Sachs, Warburg Pincus, Rio Tinto Energy Group, American Electric Power, BP America, Chevron, DuPont), the environmental community (i.e., EDF and NRDC), academia (i.e., Duke University, University of Maryland, Yale Law School, Columbia Business School, and the John F. Kennedy School of Government), and the world of philanthropy (i.e., the Ford Foundation).^{clxi}

RFF’s \$22 million budget^{clxii} is largely directed toward funding research by its 40 staff members and outside collaborators.^{clxiii} Corporate funders include car companies (e.g., Toyota, Volkswagen, Ford), energy companies (e.g., BP America, PG&E,

ExxonMobil, Chevron, Exelon, American Electric Power, Aramco, Shell, ConocoPhillips, Duke Energy, Southern Company) and numerous think-tanks connected to the energy industry (e.g., American Petroleum Institute, Nuclear Energy Institute, Edison Electric Institute, Electric Power Research Institute).^{clxiv} Foundation support comes from the usual suspects, including the Packard Foundation, Gates Foundation, Mellon Foundation, Robert Wood Johnson Foundation, and the Packard Foundation.^{clxv} Not surprising for an organization supported, in part, by the energy industry, RFF does not focus on whether and to what extent greenhouse gas emissions should be limited. Rather, if there is going to be legislation, RFF focuses on the economic mechanics of such policies.^{clxvi}

RFF was a pioneer in applying market-mechanisms to environmental problems. “Thirty years ago, the economists at Resources for the Future were pushing the idea of pollution taxes. . . . [L]awyers at NRDC thought they were nuts, and feared that they would derail command-and-control measures like the Clean Air Act, so we opposed them. . . . this was the single biggest failure in environmental management--not getting the prices right.”^{clxvii}

To promulgate these ideas, RFF’s resident scholars offer a weekly discussion forum in Washington for scholars, journalists, advocates, and policymakers, as well as special events and conferences.^{clxviii} RFF staff regularly testify before Congress on legislative matters^{clxix} and provide advice to NASA, the Environmental Protection Agency, the State Department, the Department of Energy, the Government Accounting Office, the World Health Organization, the World Bank and other governmental organizations and multinational NGOs.^{clxx}

RFF often works closely with the National Commission on Energy Policy (NCEP), a bi-partisan policy center established in 2007 by former Senate Majority Leaders Howard Baker, Tom Daschle, Bob Dole and George Mitchell.^{clxxi} One of the Commission’s top three issues is climate change and how to “turn from the question of whether we need to address climate change to how we should go about . . . the nuts and bolts of designing an effective, market-based program for reducing greenhouse gas emissions [and] . . . how government distributes emissions permits or allowances under a trading program.”^{clxxii} The close ties between NCEP’s leadership and the Democratic and Republican parties provides another avenue for RFF to introduce its ideas into the legislative process.

D. Other Environmental and Conservation Organizations

While only a few environmental organizations have been described thus far, many others have an active stake in setting climate change policy, including:

- Climate Action Network: “the dominant association representing environmental NGOs in the multilateral [international] climate negotiations[,] [w]ith over 280 members.”^{clxxiii}
- The Sierra Club: a “freewheeling lobbying and political apparatus . . . [f]ounded 98 years ago by naturalist John Muir, it has members scattered in local chapters across the nation and focuses on legislation on the state as well as national level.”^{clxxiv}
- The Nature Conservancy: the environmental NGO with the largest asset base (\$5.4 billion) and revenue (\$1.3 billion)^{clxxv} was formerly chaired by Henry Paulson, former CEO of Goldman Sachs and current Secretary of the Treasury.^{clxxvi} The organization has more than 1 million members^{clxxvii} and focuses on climate change by attempting

to reduce emissions from deforestation, help natural areas adapt, and supporting corporate and legislative policies reducing emissions.^{clxxxviii}

- Worldwatch Institute: focuses largely on educating the public and policymakers^{clxxxix} through its publications assessing environmental data, the sale of which provide 25 percent of its annual operating revenues, which are augmented by support from foundations (40 percent) and individuals (35 percent).^{clxxx} Taking a global perspective, Worldwatch is particularly focused on China and India's impact on the environment, including global warming.^{clxxx} Its 2009 State of the World report will have a particular focus on climate change.^{clxxxii}
- Union of Concerned Scientists (UCS): conducts technical studies, prepares newspaper commentaries, and works with other environmental groups on environmental and social problems.^{clxxxiii} In 2007, 21 percent of the organization's \$15.3 million budget was spent on climate issues.^{clxxxiv}
- Friends of the Earth (FoE): Considered "a small, left-of-center organization,"^{clxxxv} it works closely with grass-roots organizations to represent them in Washington. The organization has a \$2 million asset base and \$3.4 million annual budget.^{clxxxvi}
- National Wildlife Federation (NWF): one of the largest membership conservation groups, with approximately 1 million members.^{clxxxvii} NWF has expanded its mission beyond the protection of wildlife habitats through lobbying on a wide range of environmental issues, including global warming. The organization sees a natural link between climate change and its core mission because "America's 40 million sportsmen and women have reached a tipping point on global warming and support action in overwhelming numbers."^{clxxxviii}

- Other Sporting/Outdoorsman Organizations: Ducks Unlimited, Pheasants Forever, BAAS/ESPN Outdoors, Izaak Walton League of America, Association of Fish and Wildlife Agencies, the Coastal Conservation Association, American Sportfishing Association, and the Wildlife Management Institute all met recently with avid sportsman and Congressman John Dingell (D-Mich.) to express their concern about the impact of global warming on the fish and wildlife habitat.^{clxxxix} Dingell, a 52-year Congress veteran who sits on the House Energy and Commerce Committee, has promised action on climate change, however his largest constituency in Michigan is the automobile manufacturers, who oppose any legislation that forces them to lower the emissions output of their products.^{cxxc} Further, Dingell’s wife is the head of the General Motors Foundation.^{cxci} According to *Time* magazine, “Dingell would merit a bust on a pedestal at the Sierra Club, except that environmentalists cannot forget that his love for the outdoors is matched only by his love for heavy manufacturing. It was he who amended the Clean Air Act to guarantee that the U.S. auto industry must never be harmed by pollution regulations.”^{cxcii}

IV. The Battle over Legislation: S.2191: America’s Climate Security Act

On December 5, 2007, the Environment and Public Works Committee voted 12-8 to report S.2191: America’s Climate Security Act^{cxci} to the full Senate.^{cxci} The bill was supported by all committee Democrats,^{cxcv} as well as Warner (R-VA) and independents Lieberman (CT) and Sanders (VT). Other known Republican supporters include Coleman (MN), Collins (ME), and Dole (NC).

S.2191 requires a 70 percent cut from 2005 levels of greenhouse gases (GHG), particularly carbon dioxide, by 2050.^{cxvii} GHG emitters would be able to trade their emissions allocations.^{cxviii} Existing emitters would receive some allocations for free, while others would be auctioned.^{cxviii} Funds generated by the auctions would be allocated to develop cleaner energy technologies and aid to the poor to offset higher energy bills.^{cxix}

Issue 1: Extent of Emissions Cap

The vast majority of climate scientists and environmental organizations believe an 80 percent reduction of emissions below 1990 levels is necessary by 2050 in order to minimize the effects of global warming.^{cc} As noted above, S.2191 allows for a higher level of emissions.

Issue 2: Allocation of Emissions Credits

In a cap-and-trade system, as opposed to a carbon tax system of regulation, there is a significant risk that many credits will be allocated at no cost to existing industries.^{cci} According to RFF, S.2191 provides the following emissions allocations: “33% free to industry (including electric generators), with phase out; 11% to energy customers; 26.5% auctioned (gradually increased to 69.5%) to fund technology deployment, transition assistance, and adaptation; 9% set aside for CCS [carbon capture and storage] and sequestration; 10.5% to states; 5% for early action.”^{ccii}

The Battle

Within the climate change sphere, “[n]ot all NGOs are members of a single epistemic community and fundamental rifts exist between organizations; as the debate

evolves, migration between coalitions occurs.”^{cciii} Based on the aforementioned issues, Friends of the Earth, with moral support from Greenpeace,^{cciv} has nicknamed S.2191 the “Coal Subsidy Bill”,^{ccv} and is fighting to defeat it.^{ccvi}

In reply, EDF “sent an email to several Senate offices excoriating Friends of the Earth for placing [S.2191] . . . ‘under attack’”, and characterized Friends of the Earth as “small and fairly isolated,” in contrast to “ED[F] and many other major environmental groups . . . in favor of moving forward to get a strong bill like [S.2191]”. “Friends of the Earth is . . . calling for . . . unrealistic dramatic changes” to the bill.^{ccvii} NRDC chimed in that “We do not agree with Friends of the Earth” and believe that S.2191 “is a very strong start.”^{ccviii} The Nature Conservancy concurs with NRDC,^{ccix} as do WWF,^{ccx} NWF,^{ccxi} the National Environmental Trust, the Union of Concerned Scientists, and the Wilderness Society.^{ccxii}

Clinton and Obama have called for even more stringent legislation than S.2191,^{ccxiii} however they may support the bill as a first step. At issue here is whether enactment of S.2191, which will at least trigger some immediate action on climate change, may hamper future legislation that calls for a greater reduction in emissions. EDF, NRDC, WWF, NWF, UCS and others take the view that it is better to push for some immediate emissions reductions now rather than waiting for a possible successor bill offering a lower emissions cap at some unknown point in the future. This emphasis on quick, albeit possibly imperfect, legislative action seems sensible in light of testimony by Fred Krupp, the President of the Environmental Defense Fund before the Senate Environment and Public Works Committee on November 15, 2007:

“If the legislation is enacted and takes effect in 2012, the emissions caps would result in an annual reduction of emissions of just under 2% per year and, for

covered sources, arrive at a reduction of 15% below current levels by 2020. But what happens if we delay enacting legislation by two years? Just two years of delay – holding everything else constant – has major consequences. As you can see in the diagram behind me, in order to result in the same amount of cumulative emissions by 2020 (and with climate change, it is the cumulative emissions that matter), a two-year delay will require that emissions fall by 4.3% every year – over twice as quickly! Instead of a reduction of 15% in the annual emissions for the year 2020, two years of delay means 2020 emissions have to be reduced by 23% – just to get to the same place. . . . [E]arly targets will jump start the entrepreneurial energy we need to deploy current technology and develop even better technology.”^{CCXIV}

Also at issue is whether granting some carbon emission credits to existing emitters is essential to winning sufficient political support for passage of the bill. Friends of the Earth does not seem to consider this side of the issue, while groups like EDF and NRDC accept it as a likely necessity to securing a sufficient majority to pass the legislation.

V. Conclusion

In America, the mere fact that one is concerned about climate change or considered an environmentalist is far from predictive of one’s civil society involvement. Rather, American civil society is as diverse as its polity in coping with climate change:

Some Americans (e.g., members of Greenpeace) are concerned about global warming due to its impact on people living near sea-level in developing countries, such as India and Bangladesh, while others are particularly concerned about the endangerment of animal species and their habitat (e.g., members of NWF), or perhaps the supply of fish for their future fishing expeditions (e.g., members of the American Sportfishing Association).

Some Americans seek to control climate change through litigation (e.g., supporters of NRDC and Earthjustice) while others apply direct public pressure (e.g.,

supporters of EDF, WWF, Greenpeace). Of those who favor litigation, some NGOs serve as both principal and attorney (e.g., NRDC), while other focus solely on representing other environmental NGOs (e.g., Earthjustice). For those who favor public pressure, some NGOs believe it should be strictly adversarial (e.g., Greenpeace), while others seek a more cooperative approach (e.g., EDF and WWF). Yet another group of concerned Americans believes their efforts are best spent educating their fellow citizens and policymakers (e.g., supporters of Worldwatch, UCS, RFF, and WRI).

Those who focus on enacting climate change legislation, differ on the means to achieve this goal. One constituency (e.g., EDF, NRDC, WWF, NWF, UCS) believes existing polluters may need to be co-opted through the granting of emission credits, while other constituencies (e.g., supporters of Greenpeace and Earthjustice) believe that all emissions credits should be sold to the highest bidder, regardless of the economic impact on existing polluters. Likewise, some emphasize enacting legislation quickly and improving it later, while others believe that any climate change legislation must stay within the latest scientifically established emissions cap from day one, even if it means a delay in passing such a law.

Fortunately, as discussed herein, American civil society is diverse enough to provide outlets for all of these preferences and viewpoints – a reflection of our own strong national sense of individuality.

ⁱ David E. Sanger, “Bush Will Continue to Oppose Kyoto Pact on Global Warming”, *N.Y. Times*, 12 June 2001.

ⁱⁱ D. M. Reiner, T. E. Curry, M. A. de Figueiredo, H. J. Herzog, S. D. Ansolabehere, K. Itaoka, F. Johnsson, and M. Odenberger, “American Exceptionalism? Similarities and Differences in National Attitudes Toward Energy Policy and Global Warming”, *Environ. Sci. Technol.*, 40 (7), 2093-2098, 2006.

ⁱⁱⁱ *Ibid.*

^{iv} Irene Lorenzoni and Nick F. Pidgeon, *Public Views on Climate Change: European and USA Perspectives*, *Climatic Change*. Dordrecht: July 2006. Vol. 77, Iss. 1-2; pg. 73.

^v Bryan Walsh, “How to Win the War on Global Warming”, *Time*, 16 April 2008 (available at http://www.time.com/time/specials/2007/article/0,28804,1730759_1731383_1731363-2,00.html); *see also* John Christoffersen, “18 states commit to take action on climate change”, *Wired*, 18 April 2008 (available at

http://news.wired.com/dynamic/stories/G/GOVERNORS_GLOBAL_WARMING?SITE=WIRE&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2008-04-18-21-25-16) (where Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, Virginia and Washington signed declarations that “recommit themselves to the effort to stop global warming and call on congressional leaders and presidential candidates to work with them to establish a comprehensive national climate policy.”)

^{vi} Eli Sanders, “Rebuffing Bush, 132 Mayors Embrace Kyoto Rules”, *N.Y. Times*, 14 May 2005.

^{vii} “Transatlantic Trends 2007 public opinion survey”, German Marshall Fund of the United States, Compagnia di San Paolo, Fundação Luso-Americana, Fundación BBVA, and the Tipping Point Foundation (available at <http://www.transatlantictrends.org/trends/index.cfm?id=53>) at 9.

^{viii} “The President, The State Of The Union And The Troop Increase”, *CBS News Poll*, 22 January 2007 (available at http://www.cbsnews.com/htdocs/pdf/012207_bush_poll.pdf)

^{ix} “Americans Consider Global Warming an Urgent Threat, Poll Finds”, *Yale University Project on Climate Change and Gallup*, 1 October 2007 (available at <http://www.yale.edu/opa/newsr/07-10-01-03.all.html>) (Gallup, 1 October 2007); *see also* “Poll Survey”, *FOX News/Opinion Dynamics*, 30-31 January 2007

(available at www.pollingreport.com/enviro.htm) (79 percent of Americans believe global warming is caused either entirely, or in part, by “people’s behavior”).

^x “The Second Annual ‘America’s Report Card on the Environment’ Survey”,

The Woods Institute for the Environment at Stanford University in collaboration with The Associated Press, 25 September 2007 (available at

http://woods.stanford.edu/docs/surveys/GW_200709_AP_survey.pdf)

^{xi} Gallup, 1 October 2007, *supra* note ix.

^{xii} *Ibid.*

^{xiii} “Global Warming Seen as a Problem That Needs to be Addressed Globally, But Most People Want U.S. to Take the Lead”, *The Harris Poll* #109, 7 November 2007 (available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=828)

^{xiv} “The Harris Poll: Nearly Half of Americans Cite ‘Too Little’ Environment Regulation”, *The Wall Street Journal Online*, 13 October 2005 (available at http://online.wsj.com/public/article_print/SB11291455511566939-0oBCrZEVMPaOkKdWEKDn8AzZ60A_20061013.html)

^{xv} Edward W. Maibach, Connie Roser-Renouf, and Anthony Leiserowitz, “Communication and Marketing as Climate Change Intervention Assets: A Public Health Perspective”, *Center of Excellence in Climate Change Communication Research*, George Mason University (2008) at 17.

^{xvi} *Ibid.* at 16

^{xvii} *Ibid.*

^{xviii} *Ibid.*

^{xix} “What Are Americans Thinking And Doing About Global Warming”, *Porter Novelli/George Mason University Centre of Excellence in Climate Change Communication Research*, 2008 (available at www.porternovelli.com/site/pdfs/PN_GMU_Climate_Change_Report.pdf) at 11.

^{xx} *Ibid.* at 5.

^{xxi} Seymour Martin Lipset, *American Exceptionalism* (New York: Norton 1996) at 277.

^{xxii} Alexis de Toqueville, *Democracy in America*, at 109.

^{xxiii} United Nations Environment Programme & World Meteorological Organization, Intergovernmental Panel On Climate Change, (available at <http://www.ipcc.ch>).

^{xxiv} The National Academies are indeed interested in climate change and believe it is occurring. See, e.g., Understanding and Responding to Climate Change, Highlights of National Academies Report, 2008 Edition, *National Academy Of Sciences, National Academy Of Engineering, Institute Of Medicine, National Research Council* (available at http://dels.nas.edu/dels/rpt_briefs/climate_change_2008_final.pdf).

^{xxv} See, e.g., www.us-cap.org/; and http://www.edf.org/documents/7452_2007_Annual_Report.pdf at 6 (WRI and EDF “helped launch the U.S. Climate Action Partnership (USCAP), an alliance of companies and nonprofit groups dedicated to Congressional passage of a declining national cap on greenhouse gas emissions. . . . USCAP has grown to include six nonprofit groups alongside 27 corporate members from virtually every sector of the economy and all 50 states, representing more than \$2 trillion in revenue. Together, [it is] calling for a 60 to 80% reduction in emissions by 2050, using a market-based cap-and-trade system.”).

^{xxvi} See www.pewclimate.org/companies_leading_the_way_belc; Clair Gough and Simon Shackley, “The Respectable Politics of Climate Change: The Epistemic Communities and NGOs”, *International Affairs* (Royal Institute of International Affairs 1944-), Vol. 77, No. 2 (April, 2001), pp. 329-345 (Blackwell Publishing on behalf of the Royal Institute of International Affairs) at 342; and Bill Day, “Changing climate for big oil ; Concerned about global warming and extreme weather, some energy giants are branching out into low-emission fuels”, *San Antonio Express-News (Texas)* 26 August 2001 (“The council has four tenets: that scientific evidence about carbon emissions causing global warming is sound, that emissions should be measured and reduction plans enacted, that the Kyoto Protocol is a good first step but more steps are needed, and that reductions can be made without harming the economy. . . . “ BP, one of its members, reportedly joined “to make sure they could hire and retain the best employees, and without a progressive attitude, they couldn't do that.”)

^{xxvii} See, e.g., Gough and Shackley (2001) at 345, *supra* note xxvi.

^{xxviii} Kady O'Malley, “NGOs, Industry Advocates Will Do Their Best to Influence the Climate Change Agenda”, *Embassy: Canada's Foreign Policy Newsweekly*, 23 November 2005 (“a Washington-based nonprofit organization that has lobbied extensively against Kyoto and similar environmental initiatives, and which has received funding from major American corporations, including Exxon Mobil, Chevron, and the Daimler-Chrysler Corporation Foundation . . . There is still a question within the scientific community on how much the planet is warming, and how much is due to natural climate change phenomenon, and . . . even if we implement Kyoto . . . the cost is going to be tremendous.”).

^{xxix} *Ibid.* (The “spokesperson for the Competitive Enterprise Institute . . . admits that for groups like his, there's not much of a reason to go [to a climate change policy meeting] -- but . . . [w]e can annoy people by asking difficult questions, and essentially just be a thorn in the side of the Kyoto true believers, and there's some satisfaction in that.” He also uses meetings like this to pick up the “inside stuff” that environmental groups are planning.”).

^{xxx} See Gough and Shackley (2001), *supra* note xxvi at 333 (“a hard line group of multinationals aggressively resisting moves to restrict fossil fuel use, as an alternative to the orthodoxy represented by the IPCC / Kyoto Protocol supporters. This coalition has focused upon the uncertainty of climate predictions, casting serious doubt on whether global climate models are adequate tools for generating predictions at all, and finding reasons why the observational record is also inadequate.”)

^{xxxi} See, e.g., papers prepared for Brookings debating the efficacy of a carbon tax vs. a cap-and-trade system: Robert Stavins, “A U.S. Cap-and-Trade System to Address Global Climate Change”, *Brookings Institution, Discussion Paper* 2007-13, October 2007 (available at http://www.brookings.edu/papers/2007/10climate_stavins.aspx, last visited 29 February 2008), 50-51; and Gilbert Metcalf, “A Proposal for a U.S. Carbon Tax Swap: An Equitable Tax Reform to Address Global Climate Change”, *Brookings Institution, Discussion Paper* 2007-12, October 2007 (available at ase.tufts.edu/econ/events/specialEventsDocs/metcalfCarbonTax.pdf, last visited 29 February 2008).

^{xxxii} See, e.g., Juliet Eilperin, “AEI Critiques of Warming Questioned: Think Tank Defends Money Offers to Challenge Climate Report”, *Washington Post*, 5 February 2007, Page A04 (describing AEI “offer[ing] a \$10,000 honorarium to scientists to critique the IPCC” report on climate change); and Ian Sample, “Scientists offered cash to dispute climate study”, *The Guardian*, 2 February 2007.

^{xxxiii} See, e.g., Sallie Baliunas, “Warming Up to the Truth: The Real Story About Climate Change”,

Heritage Lecture #758, 22 August 2002 (available at <http://www.heritage.org/research/energyandenvironment/HL758.cfm>) (“Scientific facts gathered in the past 10 years do not support the notion of catastrophic human-made warming as a basis for drastic carbon dioxide emission cuts.”)

^{xxxiv} See, e.g., Patrick J. Michaels, “Is the Sky Really Falling? A Review of Recent Global Warming Scare Stories,” *Cato Institute Policy Analysis* no. 576, 23 August 2006 (available at http://www.cato.org/pub_display.php?pub_id=6622) (“This constellation of half-truths and misstatements is a predictable consequence of the way that science is now conducted, where issues compete with each other for public support.”)

^{xxxv} See, e.g., <http://www.globalwarmingheartland.org/> (“There is no convincing scientific evidence that human release of carbon dioxide, methane, or other greenhouse gases is causing or will, in the foreseeable future, cause catastrophic heating of the Earth’s atmosphere and disruption of the Earth’s climate.”); and Stevenson Swanson, “Summit warms the hearts of climate change skeptics,” *Chicago Tribune*, 9 March 2008 (“In what was billed as the largest gathering ever of climate change skeptics, the Chicago-based Heartland Institute, a libertarian advocacy group, sponsored a three-day conference here last week that drew more than 550 people from at least 11 countries.”).

^{xxxvi} See, e.g., Jeffrey St. Clair, “One for Oil and Oil for One: The Bi-Partisan Politics of Oil,” *Counterpunch*, October 27, 2005 (available at <http://www.counterpunch.org/stclair10272004.html>) (“[T]he Teamsters have long pushed for opening up the Arctic National Wildlife Refuge to drilling and for the construction of a natural gas pipeline to cut across some of the wildest land in North America from the tundra of Alaska to Chicago.”)

^{xxxvii} Edward W. Maibach, Connie Roser-Renouf, and Anthony Leiserowitz, “Communication and Marketing as Climate Change Intervention Assets: A Public Health Perspective”, Center of Excellence in Climate Change Communication Research, George Mason University (2008) at 25.

^{xxxviii} Gough and Shackley (2001), *supra* note xxvi, at 333.

^{xxxix} Steve Crabtree, “Surprising Stats on ‘Active’ Environmentalists”, *Gallup Poll*, 8 April 2003 (available at <http://www.gallup.com/poll/8143/Surprising-Stats-Active-Environmentalists.aspx>)

^{xl} *Ibid.*

^{xli} Gallup’s Pulse of Democracy: Environment, *Gallup Poll*, 11-14 March 2007 (available at <http://www.gallup.com/poll/1615/Environment.aspx>)

^{xlii} Gough and Shackley (2001), *supra* note xxvi, at 329.

^{xliii} *Ibid.* at 336.

^{xliv} Ronald G. Shaiko, *Voices and Echoes for the Environment: Public Interest Representation in the 1990s and Beyond* (Columbia University Press: New York 1999) at 119.

^{xlv} While the Supreme Court, in *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007), held that the Clean Air Act authorized the U.S. Environmental Protection Agency to regulate greenhouse gas emissions from new motor vehicles, it is still unclear how the EPA will conduct such regulation. *But see* Robert R. Nordhaus, “The New Power Generation: Environmental Law And Electricity Innovation: Colloquium Article: New Wine Into Old Bottles: The Feasibility Of Greenhouse Gas Regulation Under The Clean Air Act” 15 *New York University Environmental Law Journal* 53 (2007) (“because of gaps in the potential coverage of CO₂ (and other GHG [Greenhouse Gas]) emissions, impediments to the establishment of a national cap-and-trade system, and limitations on the control of motor vehicle emissions, a regulatory program under the CAA [Clean Air Act] would be significantly less effective and more costly than a program specifically designed to control GHG emissions.”).

^{xlvi} Jonathan H. Adler, “Citizen Suits And The Future Of Standing In The 21st Century: From *Lujan To Laidlaw* and Beyond: Stand Or Deliver: Citizen Suits, Standing, And Environmental Protection”, 12 *Duke Environmental Law & Policy Forum* 39, 42 (Fall 2001).

^{xlvii} Other regular environmental NGO litigators are described in Kristi M. Smith, “Who’s Suing Whom?: A Comparison of Government and Citizen Suit Environmental Enforcement Actions Brought Under EPA-Administered Statutes, 1995-2000”, 29 *Columbia Journal of Environmental Law* 359, 381-82 (2004); and Jennifer Cassel, “Enforcing Environmental Human Rights: Selected Strategies of US NGOs”, 6 *Northwestern University Journal of International Human Rights*, Fall 2007 (describing litigation strategy of, *inter alia*, Earthjustice).

^{xlviii} Barton H. Thompson, Jr., “Innovations In Environmental Policy: The Continuing Innovation Of Citizen Enforcement” *University of Illinois Law Review* 185, 187-88 (2000).

^{xlix} *Ibid.*

^l Luther J. Carter, “Environmental Law (II): A Strategic Weapon Against Degradation?”, *Science*, New Series, Vol. 179, No. 4080 (30 March 1973), pp. 1310+1312+1350, American Association for the Advancement of Science (available at: <http://www.jstor.org/stable/1735060>).

^{li} <http://www.eli.org/About/index.cfm> (rather than directly litigating, ELI focuses on advancing the status of environmental law through “impartial analysis to opinion makers, including government officials, environmental and business leaders, academics, members of the environmental bar, and journalists.”)

^{lii} D. T. Kuzmiak, “The American Environmental Movement”, *The Geographical Journal*, Vol. 157, No. 3, (November 1991), pp. 265-278, 275, Blackwell Publishing on behalf of The Royal Geographical Society (with the Institute of British Geographers) (available at: <http://www.jstor.org/stable/635501>).

^{liii} *See, e.g.*, *NRDC v. DOE*, 191 F.Supp.2d 41 (D.D.C. 2002).

^{liv} <http://www.nrdc.org/about/finances.asp>

^{lv} *Ibid.*

^{lvi} http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=17c82c1e-802a-23ad-4751-326cb5e75054&Witness_ID=ca2744e4-4cff-45b0-9487-288226d9c503

^{lvii} http://www.earthjustice.org/about_us/our_history/index.html

^{lviii} *Ibid.*

^{lix} *See, e.g.*, “Department of Energy Allowing America’s Energy to Waste Away”, *NRDC Press Release*, 8 May 2007 (available at <http://www.nrdc.org/media/2007/070508.asp>) (where Earthjustice represented NRDC to “challenges [the U.S. Department of Energy’s] weak and outdated standards” for air conditioners and heat pumps, thus “allow[ing] this equipment to continue to waste both energy and money, and generate thousands of needless tons of air pollution, including greenhouse gases that contribute to global warming.”)

^{lx} For example, Earthjustice has endorsed multiple bills in the House and Senate related to climate change: the Global Warming Pollution Reduction Act sponsored by Senators Bernie Sanders (D-VT) and Barbara Boxer (D-CA), and the Safe Climate Act, sponsored by Representative Henry Waxman. *See* http://www.earthjustice.org/our_work/issues/global-warming/national/; and <http://www.earthjustice.org/news/press/007/earthjustice-praises-waxman-global-warming-bill.html>.

^{lxi} http://www.earthjustice.org/about_us/our_history/index.html

^{lxii} http://earthjustice.org/about_us/your_donation/index.html

^{lxiii} 42 U.S.C.S. §§ 7401 *et seq.* (text available at <http://www.epa.gov/air/caa/>)

^{lxiv} <http://www.earthjustice.org/news/press/006/earthjustice-statement-on-hearing-before-supreme-court-on-global-warming-case.html>; http://www.supremecourtus.gov/oral_arguments/argument_transcripts/05-1120.pdf at 3, line 19.

^{lxv} Christine A. Klein, “The New Nuisance: An Antidote to Wetland Loss, Sprawl, and Global Warming”, *Boston College Law Review*, Vol. 48, 1226-27 (2007); and Thomas W. Merrill, “Global Warming as a Public Nuisance”, *Columbia Journal of Environmental Law*, Vol 30, 293 (2005).

^{lxvi} *Connecticut v. Am. Elec. Power Co.*, 406 F. Supp. 2d 265 (S.D.N.Y. 2005) (holding that climate change was a nonjusticiable political question that should be decided by the legislature, not the courts.).

^{lxvii} *See* discussion of TXU takeover and role of EDF, *infra* 17.

^{lxviii} Jamie R. Hendry, “Taking Aim at Business: What Factors Lead Environmental Non-Governmental Organization to Target Particular Firms?”, *Business & Society*, March 2006.

^{lxix} *Ibid.*

^{lxx} “Sue the Bastards”, *Time*, 18 October 1971 (available at <http://www.time.com/time/magazine/article/0,9171,910111,00.html>); *see, e.g.*, *City of Chicago v. EDF*, 511 U.S. 328 (1994).

^{lxxi} Robert Gottlieb, *Forcing the Spring: The Transformation of the American Environmental Movement* (Island Press, 2005) at 192.

^{lxxii} Bret Schulte, “Fred Krupp environmentalist: Teaming up with the enemy”, *U.S. News & World Report*, 12 November 2007 (available at <http://www.usnews.com/articles/news/best-leaders/2007/11/12/fred-krupp.html>)

^{lxxiii} <http://www.edf.org/home.cfm>

^{lxxiv} *Ibid.*

- ^{lxxv} <http://www.edf.org/page.cfm?tagID=362>
- ^{lxxvi} David Wessel, "How Fred Krupp's Singular Style Serves Business, Environment Well", *The Wall Street Journal Online*, 1 March 2007 (available at <http://webreprints.djreprints.com/1912570891197.html>).
- ^{lxxvii} D. T. Kuzmiak (1991), *supra* note lii.
- ^{lxxviii} Schulte (2007), *supra* note lxxii.
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