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## **Environmentalism's Legal Legacy**

*By Angela Logomasini*

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# Environmentalism's Legal Legacy

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## Executive Summary

Environmental activists, policy scholars, and others claim that the environmental movement is in decline, suffering from attacks on the right on Capitol Hill and from the White House in recent years. Yet given some distinctive attributes associated with this issue, the progressive environmental cause is uniquely situated to ensure that it receives considerable attention in Washington. The result has been an uncommon expansion of government activity in a single issue area. And despite claims to contrary, progressive environmental policy making has continued to gain ground even in recent times—even under Republican leadership.

This paper highlights legislative expansion of environmental law. It uses several datasets to document the growth of the environmental legal legacy. First, an analysis of congressional vote scoring by the League of Conservation Voters (LCV) reveals that environmental pressure groups do relatively well even in a subset of close votes scored—winning a majority of the time in eight out of 17 congresses and winning 43 percent of these votes overall. It does indicate that environmental groups faced some real challenges in recent years, but it does not reveal how that affected public policy. The LCV scoring also shows that environmental groups are involved in policy making at a very detailed level.

Two additional analyses reveal the importance of environmental issues vis-à-vis other issues on Capitol Hill. The first focuses on congressional committee actions that produced public laws during 12 congresses. This analysis showed that environmental committees remained a center of legislative activity throughout the timeline studied, and that activity reached high points during the 1990s after the Republicans gained a majority in Congress. This result contradicts claims that the 1990s represented an age of gridlock because of challenges from the right. The data show that during the 1980 and 1990s, Congress produced a steady stream of environmental public laws.

Another analysis in this paper accessed all public laws in the THOMAS Congressional Database for each of 16 congresses (1972-2004). These laws were each manually coded by issue topic. These data reveal that environmental issues—excluding symbolic laws—experienced more activity than any of the other categories, even outperforming the mega-issue categories of commerce, social and public welfare, and defense. Analyzed over several congresses, these data showed that the oft-cited “gridlock” in environmental policy making simply did not exist. This analysis shows further that the majority of these environmental laws possessed tangible policy implications. Further, it revealed that these laws, by and large, moved the issue in a progressive direction—even during periods in which Republicans challenged environmental policy programs.

Together these analyses demonstrate an impressive legacy for the environmental movement. While the environmental movement has experienced some challenges in recent years, major initiatives overhauling and redirecting environmental policy in a more conservative direction have largely failed. In the end, policy making trends favor the expansion of environmental law in a largely progressive direction.



## I. Environmentalism—Dead or Alive?

Is environmentalism in decline? You might think so from reading recent political commentary. Some have suggested that environmental policy has been under attack from the right and suffers from “gridlock” in Congress.<sup>1</sup> Even environmental activists have begun to question the viability of their movement. In a 2004 *New York Times* article, “The Death of Environmentalism,” Michael Shellenberger and Ted Nordhaus sparked a debate within the environmental movement.<sup>2</sup> The authors lament that “modern environmentalism is no longer capable of dealing with the world’s most serious ecological crisis. Over the last 15 years environmental foundations and organizations have invested hundreds of millions of dollars into combating global warming. We have strikingly little to show for it...people in the environmental movement today find themselves politically less powerful than we were one and a half decades ago.”<sup>3</sup>

Shellenberger and Nordhaus suggest that the movement is too focused on providing technical solutions to specific problems and, as a result, is losing a bigger battle. They claim that such shortsighted approaches have led to a series of failures—to pass national legislation to combat global warming, get the Senate to ratify the Kyoto Protocol, and tighten automobile fuel efficiency standards. They suggest that the old environmentalism might need to die to make way for a new approach, one that focuses on values rather than on technical solutions, is more politically strategic, and can offer a vision with broader appeal.

They maintain that policy successes should not be measured on whether they have an impact on environmental protection, but on the basis of whether the policies build the power of the movement and, ultimately, “remake the global economy in ways that will transform the lives of six billion people.” They admit that this goal is an “undertaking of monumental size and complexity.”<sup>4</sup> With such lofty goals, it’s not surprising they are disappointed.

Evident from the debate amongst environmental activists is the idea that, by and large, the movement is “progressive.” Shellenberger and Nordhaus take this issue a bit further, indicating that promoting a progressive state, not simply solving environmental problems, is the real focus. Accordingly, they suggest that the movement may need to broaden its scope to progressive ideals in general—such as making health care reform an environmental issue because automakers cannot afford to provide both health care and pay the cost for producing more fuel-efficient cars. They suggest that if environmentalists focused on reforming health

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care policy, perhaps it would be easier to build bridges with automakers on ways to advance legislation mandating higher levels of fuel efficiency.

Sierra Club President Carl Pope affirmed the progressive goal of the movement noting: “Environmentalism is part of a broader progressive movement, which the Right has invested enormously in undercutting for the past 30 years.”<sup>5</sup> However, he was not willing to dispense with environmental concerns as a key agenda item for the movement. He further notes that Shellenberger and Nordhaus “suggested that failing environmentalism should submerge itself in successful progressivism, but I would argue that the environmental community is one of the more successful parts of the progressive movement.”<sup>6</sup> Pope acknowledges that the movement has not made “adequate” progress on global warming, but he makes a more practical observation. It may be the nature of that issue that is the source of the problem. So rather than demanding that the movement die and be reborn, Pope looks at finding a practical fix for a particular problem.

Nordhaus and Shellenberger are correct to note that the culture has moved in a more conservative direction—a fact that does undermine their goal for a more progressive state. But they take it too far by claiming that it has “been so easy for anti-environmental groups to gut 30 years of environmental protections.”<sup>7</sup>

Progressive environmental activism is challenged by the Right, but the idea that the movement is losing that much ground belies the ongoing impact it continues to have on American life—an impact that affects both our finances and many of the choices available in modern society.

This study shows that environmental activists have built a substantial environmental regulatory state—one that has not diminished very much since its creation. It is the result of many past victories. It ensures that environmental advocates have an ongoing impact on society as long as they can prevent substantial reversals. The current environmental regulatory state in the United States consists of dozens of extensive regulatory statutes, thousands of pages of regulations, numerous government agencies continually passing new rules, and a legal system that allows activists to enforce, if not expand, their regime. Efforts to pass any significant reforms to these laws in Congress have grown more difficult—a situation referred to as “gridlock” according to many political science scholars.<sup>8</sup> Yet one could argue that such “gridlock” is an accomplishment of the movement’s ability to defend the environmental regulatory state.

As the first of a series of studies, the following analysis assesses the scope of the environmental movement’s legal legacy, quantifying

the extent of its legislative accomplishments during the past 30 years. Subsequent studies will tackle the impact of environmentalism on regulatory institutions and assess the movement's financial and other lobbying-related resources.

## II. The Legal Legacy

Environmental laws that began to be enacted in the 1960s and eventually exploded in the 1970s created an enduring legacy for the environmental movement, through which its advocates continue to impact many facets of American society. And this impact expands through regulatory agencies and the courts even in years when Congress doesn't pass additional laws. Yet environmental scholars often lament the fact that the number of environmental laws passed each year has declined, and that conflict over such laws has become common.

While there may not be much wrong with that analysis, it misses some important points. First, the absence of a complete accounting of the extent of environmental policy making during the past several decades belies the importance and extent of the environmental policy legacy that has been created in good measure by the influence of environmental pressure groups. Second, it fails to highlight these groups' ongoing importance. Finally, it fails to convey some important nuances in the trends that show that the reduced policy making is not as dramatic as some might expect and that these trends do not necessarily represent a substantial diminution in environmental group influence.

Even a cursory review of some the major existing federal environmental statutes indicates that this environmental legacy is considerable. Since 1969, Congress has passed the National Environmental Policy Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Superfund law, Resource Conservation and Recovery Act, myriad other laws, and several reauthorizations of each. However, such observations are in a sense still anecdotal. Understanding the scope of the environmental movement's accomplishments demands a more complete accounting of environmental statutes and some comparison with competing policy priorities. This paper examines the scope of environmental laws on the books with the hope of better understanding the achievement of the environmental movement. A subsequent paper will examine the impact of these laws on the regulatory process.

The following analysis involves two sets of data to systematically investigate the environmental movement's impact on the legislative

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process. The first looks at the League of Conservation Voters’ (LCV) environmental scoring of 735 votes over the 33 years that the organization has performed such scoring. The second draws data on 32 years of public laws, of which 1,163 were environmental in nature. The list of laws is drawn from the THOMAS congressional database. These two data sets provide a broader view of environmental policymaking—covering votes on amendments and the passage of environmental laws. Each database enables researchers to view the process from different angle and the two datasets offer important points of comparison.

**LCV Analysis.** Political analysts have frequently used the League of Conservation Voters’ environmental scoring to measure environmental trends. Generally, these analyses have assessed whether partisanship or ideology determines if a member is pro- or anti-environment, and most of these studies rely on a limited number of years. For example, Riley Dunlap and Michael Patrick Allen authored a study in 1976 using League of Conservation voters and Environmental Action scoring of the House of Representatives during the 92<sup>nd</sup> Congress (1971-1972).<sup>9</sup> Using this data, they concluded that Democrats more often support a “pro-environment position” than do Republicans. Like the LCV, they equate Republican sympathy for property rights and business as anti-environmental attributes that explain the Republicans’ poor performance. Similarly, Jerry Calvert analyzes members’ environmental voting during the 97<sup>th</sup> (1981-1982) and 98<sup>th</sup> (1983-1984) Congresses. Again, he uses the LCV scoring to draw conclusions about members’ commitment to environmental quality. He notes: “It is fair to assume that the scores are good indicators of each congressperson’s degree of concern for environmental quality.”<sup>10</sup>

There are several problems with such conclusions. First, reliance on environmental groups in the determination of what constitutes “pro” or “anti-environmental” introduces its own bias. The LCV is, self-admittedly, a political organization.<sup>11</sup> Hence LCV’s interpretations reflect its political biases, which may significantly skew the results. As political scholars Raymond Tatalovich and Mark Wattier show in an analysis of polling data, environmentalists are more partisan than the public at large and are in fact “a highly partisan subgroup as compared to the electorate at large.”<sup>12</sup> Accordingly, political scientist Michael Kraft points out, reliance on the LCV data is not particularly scientific and could include a considerable bias.<sup>13</sup>

We need not completely dismiss the LCV scoring as a source of information, but we should instead consider what it really can tell us. This study attempts to take a less politically normative view, using the scores to assess environmental groups' impact on public policy. It also offers a more comprehensive examination of the LCV scores—analyzing 33 years of vote scores rather than a couple of congresses. This analysis also recognizes that the LCV scores represent a limited subset of votes that are politically selected by the organization. It does not tell the complete story, which is why additional analysis follows the LCV analysis.

The LCV claims that the votes it selects represent the “most important votes” for environmentalists during the year and congress scored. Were that true, the LCV data would offer the perfect measure of environmental group effectiveness. Yet such claims are highly suspect because scoring programs are usually designed to influence the outcome of votes. It is more logical for the LCV to mostly target close votes—even when that involves ignoring major votes—with the hope that they can change the outcome through scoring. The data analyzed below supports this claim.

In addition, groups scoring members of Congress are likely to select votes that will make political opponents vulnerable in the next election. The League of Conservation Voters certainly does use the votes to select and target opponents in congressional races. And not surprisingly, Republicans often complain that LCV is partisan because it often ignores important environmental votes that would increase their scores if only the group would include them. However, it is more likely that LCV is more ideological than partisan—selecting votes that help their progressive allies and harm conservative opponents. This should be no surprise since such scorecards, by their very nature, are designed to promote agendas.

It is also worth noting that these votes do not reflect how LCV or other environmentalist lobbying affected final law. Many of the scores are on amendments and bills that never make it into law for a variety of reasons: Some bills are voted on only in one chamber; some are amendments removed later in the process; some are parts of legislation that the president eventually vetoed; and some are amended in ways that change them completely. And, as noted, many environmental bills become law without any mention in LCV reports. It must be remembered that environmental activists are involved in those other stages as well, impacting legislation in less obvious, but often more important ways.

Understanding these limitations helps ensure that the findings of this analysis are not overstated. In addition, the findings become more



meaningful when assessed against other measures. To that end, following this analysis is another that reviews the number of environmental laws actually enacted over the same general time period and the extent to which these laws reflect the progressive environmental agenda.

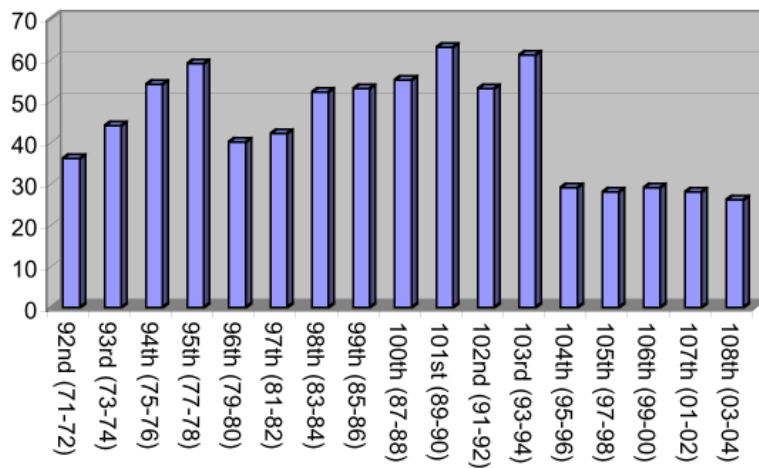
With those limitations recognized, the following assesses data from LCV scorecards starting in 1971 and running through 2004 (the last year for which we have a full Congress scored). This effort required reviewing and manually compiling data from 31 scorecards from the LCV website.<sup>14</sup> In addition to recording wins and losses, this analysis also recorded the topics scored, the bill to be voted on or amended, and the vote margins. Finally, it documented whether the vote involved an amendment, a rule, a motion, cloture, final passage, a nomination, or a resolution. Motions to table bills and amendments are counted either as amendments or as final passage depending on the situation, since those procedural votes reflect actual votes for or against the legislation at issue.

In some of the scorecards, the League of Conservation Voters also included items that rated members on a few bills that did not come to votes. In such cases, LCV assessed co-sponsorship, downgrading members for sponsoring bills LCV did not support and rewarding sponsors of bills the group supported. However, that scoring is left outside this analysis because it does not report a win or loss. In addition, a few cases in which the LCV reports were incomplete and vote scores unclear were excluded from this analysis. The end result was a database of 735 scored votes over 34 years.

Of the 735 votes scored, the LCV won 43 percent—an impressive level despite the fact that it was short of a majority. The League won more than 50 percent of the votes scored in eight out of 17 Congresses [see figure 1]. Measured in this way, it appears that the LCV experienced a loss of power when the Republicans gained majority of Congress. Between 1971 and 1994, they managed to win 51 percent of the votes. Between 1995-2004, their victory total dropped to just 28 percent.

It is likely that environmentalists did lose some influence when the Republicans—who are less receptive to the progressive approach—took control of Congress. Still, this data could exaggerate the extent of this challenge. For one thing, it does not offer a comprehensive review of the total number of environmental laws actually passed or defeated during the Congress, nor does it consider the substance of those laws. As noted, it focuses on the politically selected subset of votes on amendments, motions, and the like. Rather than revealing growth or reduction of the

**Figure 1. LCV Victories, Percent by Congress**



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environmental regulatory state, it more likely reflects the LCV’s desire to undermine its political opponents through its selection of votes. The data support this possibility as discussed below.

The 735 votes scored break down as follows:

- 580 amendments (79 percent)
- 100 passages of bills (14 percent)
- 11 votes on rules (less than 1 percent)
- 15 cloture votes (2 percent)
- Nine nominations (less than 1 percent)
- Eight motions to instruct conferees (less than 1 percent)
- Six motions to recommit to committees (less than 1 percent); and
- Six resolutions (less than 1 percent).

This breakdown, arguably, shows that LCV-scored votes do not really represent what most people would consider to be the “most important environmental votes.” One might think that scoring the passage of environmental legislation would be most important, but the LCV scores display a heavy emphasis on amendments instead. LCV often ignores final votes on significant bills, while scoring amendments that have fewer policy impacts and that in some cases cover obscure topics.

For example, one vote on an amendment to the 2002 Energy Bill focuses on “requiring that the EPA study the effects of hydraulics in fracturing on underground sources of drinking water.”<sup>15</sup> Meanwhile, during the same term, Congress also passed a Superfund reform bill, a vote that represented a significant expansion of the federal Superfund program—yet that LCV did not score. The Superfund bill passed 419-0

in the House and 99-0 in the Senate.<sup>16</sup> Given the fact that it was passed unanimously in both houses, LCV scoring would not likely have impacted the outcome so it made political sense for LCV to not score it. In addition, scoring this bill might have boosted LCV’s political opponents, making it harder for LCV to differentiate them from its allies.

Such decisions appear to be common among LCV vote score selections. During 34 years, it scored just 100 votes considering passage of environmental bills into law, while an analysis of all environmental public laws on the books, discussed below, indicated that there were more than 1,163 such laws (that analysis covers 32 years). The vast majority of these bills passed by a voice vote or by unanimous consent, but there were still 322 roll calls related to these laws. Of those, the LCV scored only 34—just 10 percent. Many of the items it did not score certainly could be considered pretty important votes [see figure 2].

If you believe the LCV, these votes do not qualify as among the “most important”—but that claim is simply not compelling. These votes

**Figure 2. Major Legislation Not Scored by the LCV**

Law	Significance	House	Senate
Passage of the Alaska National Interest Lands Conservation Act in 1980, PL 96-487.	Largest wilderness designation ever	360-65	78-14
Major reauthorizations of the Federal Clean Air Act in 1977, PL 95-95.	Major reauthorization	326-39	73-7
Clean Air Act Amendments of 1990, PL No: 101-549.	Major reauthorization	401-25	89-10 and 89-11
Reauthorizations of the Clean Water Act in 1981, PL No: 97-117.	Major reauthorization	382-18	No roll call
Reauthorization of the Clean Water Act in 1977, PL 95-217.	Major reauthorization	361-43 and 346-2	96-0
Reauthorization of the Endangered Species Act in 1988, PL No: 97-478.	Major reauthorization	399-16	93-2
Federal Land Policy Management Act passage in 1976, PL No: 100-588.	New major legislation	169-155	78-11
Revisions to the National Environmental Policy Act in 1975, PL 94-83.	Major reauthorization	279-143	370-5
Creation of the Oil Pollution Act in 1990, PL No: 101-380.	New major legislation	360-0 and 375-5	99-0
Passage of the Food Quality Protection Act, PL 104-170.	Major reauthorization	417-0	No roll call
Creation of Resource Conservation and Recovery Act (RCRA) in 1976, PL 94-580.	New major legislation	367-8	88-3
Hazardous and Solid Waste Amendments in 1984, PL No: 98-616	New major legislation	No roll call	93-0
Reauthorization of the Safe Drinking Water Act in 1986, PL No: 99-339.	Major reauthorization	382-21	94-0
Reauthorization of the Safe Drinking Water Act in 1996, PL No: 104-182.	Major reauthorization	392-0	99-0
Creation of the Toxic Substances Control Act in 1976, PL 94-469.	Major new legislation	360-35	73-6 and 60-13
Legislation approving U.S. participation in the United Nations Environment Program in 1973, PL 93-188.	Major policy move	266-123	No roll call
Reauthorization of the Wilderness Act in 1978, PL 95-235.	Major reauthorization	333-44 and 380-18	83-5 and 89-3

do not qualify more likely for political reasons. One indicator of this is the fact that the vote margins for the unscored votes are rarely tight—lending support to the idea that LCV focuses on close votes to highlight differences between its allies and opponents, and perhaps giving LCV more of a chance to change outcomes because it would only need to pressure a handful of members for the vote to shift to its position.

This argument makes even more sense when one compares the vote margins of all 735 LCV-scored votes against the vote margins of the roll call votes on public laws that LCV did not score. For all Senate votes that LCV scored, the average vote margin was 49 to 45—both for votes that LCV won and those it lost—compared to a margin of 84 to 6 for the votes that LCV did not score. For the House votes scored by the LCV, the average vote margin was 206 to 203, while the average vote margin for votes on public laws that the LCV did not score amounted to 354 to 35.

This is not to say that all LCV-scored votes are this close, since averages cannot tell all the details. However, use of the average enables cross-comparisons with other environmentally related roll call votes and indicates that there are many important environmentalist victories that are not reflected in an analysis of the LCV scorecard.

So what does the LCV scoring tell us? It indicates that the environmental movement does relatively well even in a subset of close votes. It raises the possibility that environmental groups faced greater challenges from the right in recent years yet does not tell us how those challenges actually impacted public policy. And it demonstrates that the environmental movement is involved in policy making at a very detailed level, particularly since it has resources to focus on very narrow issues in amendments to environmental and non-environmental bills.

***Thirty-Two Years of Public Law.*** To assess the scope of federal environmental law, this analysis reviewed all the public laws in the THOMAS online database, which contains the lists of public laws passed in every Congress, starting with the 93<sup>rd</sup> (1973-1974) through the 109<sup>th</sup> (2005-2006). Since the 109<sup>th</sup> Congress was not yet completed during the production of this analysis, this study uses data starting in 1973 and ends with 2004, providing 32 years of data to assess trends.

The database yields a total of 8,838 public laws. However, a review of public laws does not fully account for all the laws on the books. Since many laws pass as part of appropriations bills, they do not have separate public law numbers and are not as easy to trace. In this analysis,

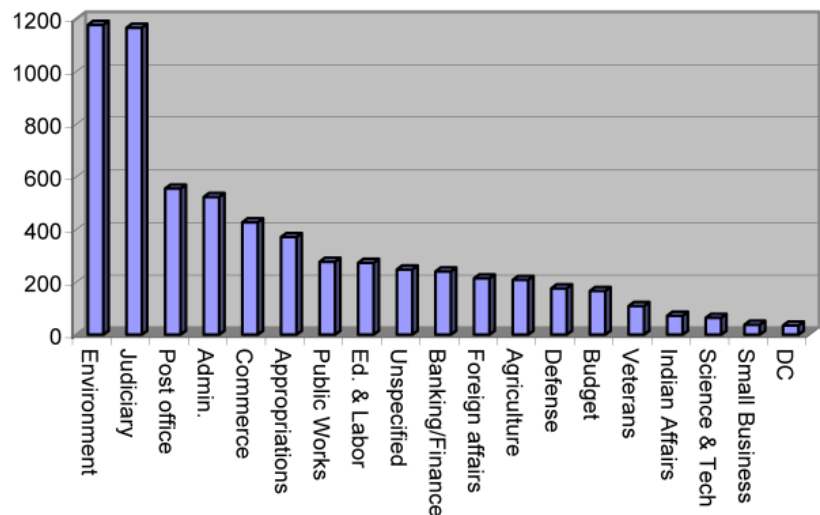
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all appropriations bills, including environmental appropriations, are grouped into a separate budget category rather than within the environmental category. Since appropriations are “must pass” legislation they often include substantial changes to public policy that would not be noticed in an analysis of public laws. However, it is worth noting that despite the fact that this data sample of public laws data misses some legislative activity, it represents the bulk of lawmaking and provides a pretty extensive picture of legislative trends.

One way to determine how much legislative activity was devoted to the passage of environmental laws is to consider which committees had considered which laws. The THOMAS database includes committees information since 1981. By categorizing each committee according to its area of primary jurisdiction, we can assess what percentage of the laws passed since 1981—a total of 6,339—came from committees whose area of jurisdiction was primarily environmental. These include the Senate Environment and Public Works, Senate Energy and Natural Resources, and House Resources committees. Since many laws were reviewed by several committees, this analysis relies on which committee THOMAS lists as first handling the bill. Since there was overlapping jurisdiction, committees were lumped into categories based on areas of jurisdiction. Laws for which THOMAS does not specify committee are grouped into the “unspecified” category. The categories used here are as follows:

- Agriculture
- Appropriations
- Banking and Finance

**Figure 3. Public Laws Passed by Committees, 1981-2004, According to Committee Jurisdiction**

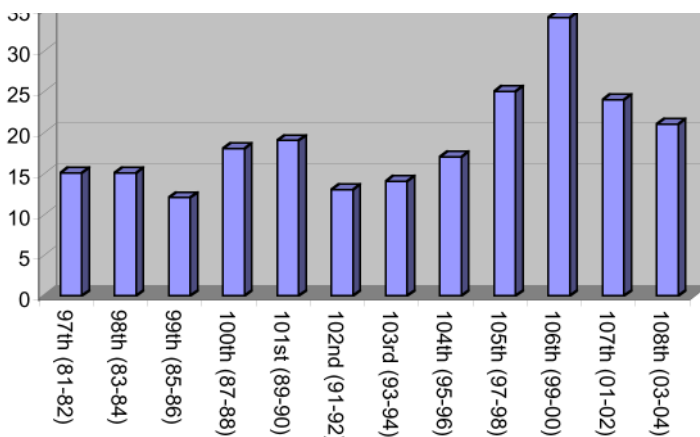


- Commerce
- Defense and Intelligence
- District of Columbia
- Education and Labor
- Environment
- Foreign Affairs
- Government Administration
- Indian Affairs
- Judiciary
- Post Office
- Science and Technology
- Small Business
- Tax and Budget
- Transportation and Public Works
- Veterans' Affairs
- Unspecified

This analysis indicates that environmental committees reported a disproportionately large percentage of the laws considered during each of the years covered. In fact, when the data is aggregated, environmental committees produced more laws than any of the other committee categories [see figure 3], with judicial issues coming in a close second.

This analysis also offers some insights on which years involved the most environmental activity. It shows that environmental committees remained a locus of legislative activity throughout the entire timeline, peaking during the 1990s when the Republicans took over majority control

**Figure 4. Public Laws Passed by Environmental Committees, As a Percent of Total Laws Passed**



*Many committees categorized as non-environmental in fact cover a wide range of environmental issues.*

of Congress [see figure 4]. This finding counters environmental activists' claims that the 1990s represented an age of gridlock in environmental policy making. As the chart shows, Congresses during the 1980s and 1990s produced a steady stream of environmental legislation, both in absolute numbers and as a percentage of laws passed by each Congress.

Reliance on committee assignments offers a relatively objective measure for judgment in classification of data. However, it has some limitations. One key problem is that committee jurisdictions are not quite so neatly organized. Many committees categorized as non-environmental in fact cover a wide range of environmental issues. These include the Energy and Commerce in the House and the Merchant Marine and Agriculture committees in both houses. Some of the environmental committees cover a range of other issues as well. For example, the Senate Environment and Public Works Committee covers many non-environmental issues within its public works portfolio.

Another limitation is the fact that THOMAS does not include committee listings prior to 1981, preventing comparisons with the 1970s. Finally, it is unclear as to what those laws entailed. While there may have been many environmental laws, the committee analysis does not show which, if any, of the laws passed involved substantial environmental policy making and which were merely symbolic. Nor does this analysis provide much information on the direction of environmental policy. For example, did the policies increase or decrease the federal role in environmental protection?

Accordingly, further analysis of the laws proved necessary to either validate or question the committee analysis as well as to expand and explain the findings. The more detailed approach involved manually coding each of the 8,838 public laws passed between the years 1972-2004 according to a designated issue area. This method required more judgment calls during categorization than did the committee analysis, but the categorization was relatively straightforward based on the text provided in the titles. In some cases, additional research on the laws proved necessary for proper categorization. This analysis produced a list of 13 issue areas. To keep things simple and to make incorrect categorization unlikely, issue areas were kept very broad. The category topics and criteria are as follows:

- 1. Commerce.** Policy related to agriculture, communications (including PBS), financial institutions, trade, immigration, and anything else that can be deemed commercial in nature.

**2. *Symbolic Laws and Designations.*** Laws with little or no real policy effect, such as bills naming post offices and public lands and designating days, weeks, or months to commemorate events and cultures or to raise awareness of various health concerns, such as “National Lupus week” and the “Italian-American Heritage and Culture Month.” Many of these included environmental designations, such as the designation of Earth Day or the naming of national parks. However, wilderness designations are counted under environment since they apply a management regime to the properties involved and indeed have an important public policy impact.

**3. *Education, Arts, Science and Technology, Research, Sports.*** All types of educational and cultural programs as well as scientific research.

**4. *Energy.*** Energy development and public works projects. However, many of the energy laws whose goals were mostly environmental—such as energy conservation or development of renewable energy sources—were included in the environmental category.

**5. *Environment.*** All issues related to control of pollution, management of wastes, regulation of chemical use, land management, property rights, species protection, and the like.

**6. *Foreign Affairs.*** All issues related to dealing with other nations, including such things as diplomatic relations, foreign aid, and international human rights issues. An exception is made in this category for environmentally related issues, which are categorized as environmental.

**7. *Government Administration.*** Civil service issues, parliamentary rules in Congress, procurement issues, and similar matters.

**8. *Indian Affairs.*** Anything addressed by the House and Senate Indian Affairs committees and anything primarily focused on addressing the concerns of Native Americans,



including water rights and some other issues that have some environmental angles. However, if an issue was primarily environmentally focused—but just happened to involve Native Americans to some extent—it was classified as an environmental issue. To help keep things simple, laws noting lands to be held in trust by Indian tribes were categorized under Indian Affairs. Some of these laws may have had some marginal environmental impacts, but it is likely not substantial enough to impact the final conclusions.

**9. *Social and Public Welfare.*** A very large array of issues, which, if categorized separately, would have created a needlessly complicated dataset. This category includes all social issues, health care, crime, labor, public health, civil rights, and other social or public welfare issues.

**10. *Tax, Budget, and Appropriations.*** All appropriations laws, budget resolutions, tax reform laws, and the like, including environmental appropriations.

**11. *Transportation and Public Works.*** All highway laws, flood projects, airports, and other public works programs that do not have a substantial environmental agenda. Water resource projects were counted under the environmental category since many involve water conservation, species protection, and other environmental agenda items. There were about 60 water resource projects, which, if shifted to this category, would not significantly affect the findings discussed below.

**12. *Uniformed Services, Military, and Homeland Security.*** Legislation dealing with all the uniformed military services—Army, Navy, Air Force, Marine Corps, and Coast Guard—as well as veterans’ issues. In addition, it covers national and international intelligence issues and defense policy.

**13. *Miscellaneous/Unclear.*** Laws that do not fit neatly into any of the other categories or whose issue area is not easily defined.

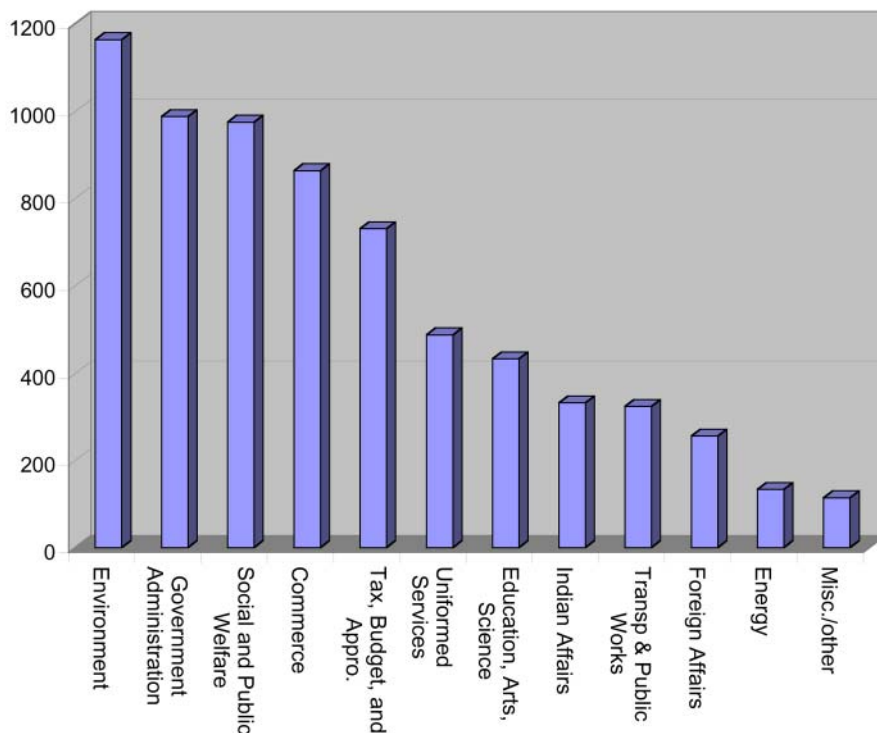
Some laws proved difficult to classify. In particular, more than 200 laws involved some sort of land exchange (between the federal government and another private or public party), boundary adjustment, sale, or acquisition of lands. Many such transactions do in fact constitute policy changes and are of environmental significance, such as those actions that increase or decrease the size of federal parks, forests, or other environmentally important property. Others involve lands that are not environmentally significant, such as the sale of urban real estate or adjustments to military bases and similar items. Accordingly, some effort was necessary to set criteria that differentiate the two categories to avoid overcounting or undercounting environmental public laws.

Accordingly, several questions were considered when categorizing such laws, such as: Is it designed to provide environmental amenities? For example, a garden developed as a memorial to Frederick Douglass on lands already owned by the Department of Interior in the District of Columbia might provide some environmental benefits, such as feeding grounds for hummingbirds. Yet this law is not counted as environmental because it is not designed for that purpose, and its environmental impact is minimal. In contrast, laws that expand the boundaries of public lands or create new parks were counted as environmental because they are designed to serve the environment and do in fact create additional federal property for wildlife use.

As a general rule, when exchanges appeared to impact national forests, parks, or wilderness areas, they were counted as environmental laws. Laws that were not categorized as environmental included those whose titles included: no mention of environmentally significant lands; language detailing exchanges, conveyances, or purchases of urban real estate; or language regarding transportation projects. Accordingly, this analysis would err on the side of underestimating the number of environmental laws, but the amount of such errors is likely to not be substantial.

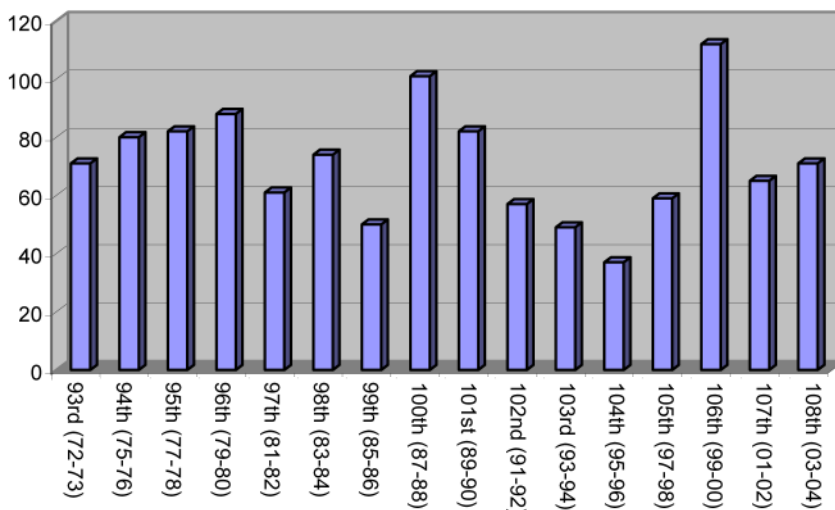
Other questions arise in the categorization of laws that establish sites for historic purposes. These were counted as environment if the law increased the federal land management role significantly. For example, the creation of parks to commemorate events and individuals are included as environmental as they expand the amount of public lands, preempting development on these properties and expanding the scope of federal management responsibilities.

**Figure 5. Public Laws by Issue Area, 1973-2004**

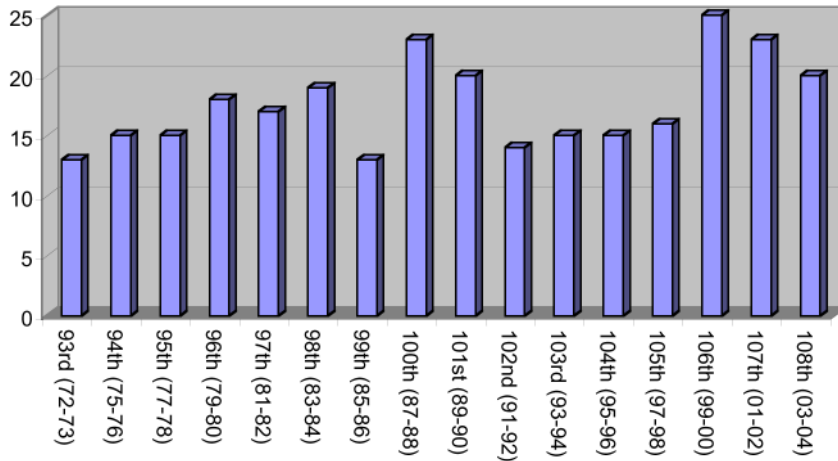


It is important to note that this analysis of public laws is not designed to measure the increase or decrease of federal land ownership overall. Because it is not clear how each law actually affects the final federal land mass, this data is not appropriate for such measures. However, we can still use this data to measure the amount of activity in Congress that involves environmental laws and use it in an effort to establish a ballpark estimate of whether there is a significant amount of environmental policy making and whether it is moving in the direction of more regulation or less.

**Figure 6. Passage of Environmental Public Laws by Congress, 1973-2004**



**Figure 7. Percent of Public Laws that were Environmental by Congress**



*A comparison of the number of laws passed within the issue areas over the past 32 years reveals that environmental issues saw more activity than any other categories.*

The results of this effort offer some interesting perspectives. A comparison of the number of laws passed within the issue areas over the past 32 years reveals that environmental issues saw more activity than any of the other categories established for this analysis [see figure 5]. It even beat the mega-categories of commerce, social and public welfare, and defense. The only area that beats environment is non-policy related laws—that is, symbolic laws and designations. Excluding the symbolic category, environment is the leading area of legislative activity, with the passage of 1,163 public laws during the 32 years considered [see figure 5]. Next came government administration with 987; social and public welfare with 974; commerce with 863; tax, budget, and appropriations with 730; uniformed services with 487; education, arts, and science with 432; Indian affairs with 331; transportation and public works with 324; foreign affairs with 255; energy with 133; and miscellaneous with 114.

When spread out over congresses, the number of environmental bills has risen and declined starting at 60 during 1973-1974 and ending with 62 in 2003-2004, with high points in 1987-1988 at 101 and 112 in 1999-2000 [see figure 6]. Measured this way, it appears that the “gridlock” or the alleged “death of environmentalism” described in recent years simply did not exist. Similarly, if you consider environmental laws as a percent of the total number of laws considered each congress, [see figure 7], the amount of environmental public laws has not changed much relative to the amount of public laws on other issues.

However, this analysis raises additional questions, such as: Were the bulk of these environmental laws at all significant in policy terms or did they involve mostly symbolic legislation? And furthermore, did a

significant percentage of these laws serve the progressive environmental agenda or did they involve “wise use” policy or “environmental rollbacks” as progressive environmentalists might dub them?

Answering these questions required yet more categorization of the laws. Each of the 1,163 environmental laws were coded for the degree of policy impact: minor, significant, substantial, and major. Again, by keeping categories broad, it is clearer as to which category applies and there is less room for normative judgment. Criteria for each category were as follows:

- **Minor.** Laws that involve mostly technical fixes, general administrative activities, and other policies that appear to have an insignificant impact on public policy.
- **Significant.** Legislation that has a significant impact on policy outcomes, but does not chart new regulatory territory. This covers a wide range of activities, from small impact to relatively important impact. It includes such things as land exchanges, conveyances, acquisitions, government commissions, programs to use duck stamps to raise conservation funds, research, “feasibility studies,” wilderness designations, trail designations, wild and scenic river designations, additions to the refuge system, temporary changes to program operation assuming they do not involve major policy issues, and similar items. Laws addressing specific parks and states are deemed significant, while laws that address policy in broad categories—laws setting policy for all parks, all national forests, or all grazing lands—are deemed more substantial. Of note, one wilderness designation law—the Alaska National Interest Lands Conservation Act—was categorized as major since it involved the largest ever addition to the nation’s wilderness system, which increased the nation’s wilderness by more than 56 million acres.<sup>17</sup> It constitutes 57 percent of the nation’s wilderness today.<sup>18</sup>
- **Substantial.** All laws deemed more than significant but not yet meeting the criteria for major. Substantial bills often included routine reauthorizations of “major” laws

(as defined below) that maintained yet did not fundamentally change the regulatory regime. When reauthorization involved major changes to major bills, then those reauthorizations are listed in the next category.

- **Major.** Regulatory statutes and reauthorizations that entailed substantial additions to environmental law. These laws either move the federal government into new areas of regulation or vastly expand existing federal controls. The basis for inclusion in this list was derived from three sources: 1) EPA's listings of major regulatory laws, 2) the Department of Energy's listing of major environmental laws, 3) and the Environmental Law Institute's (ELI) listing of major environmental legislation to be discussed in its *Environmental Law Deskbook*.<sup>19</sup> The ELI list was included because EPA and DOE did not cover public land and wildlife issues, and the major public land agencies (the departments of Interior and Agriculture) did not include lists of "major" environmental laws. In addition, a handful of several other laws that have apparent substantial impact were also deemed major.

It should be noted that some of the substantial and even major environmental laws do not appear on the list of 8,838 environmental public laws assembled here because they were passed as part of appropriation bills. For example, the Pollution Prevention Act (PPA) was part of the Omnibus Budget Reconciliation Act of 1990.<sup>20</sup> PPA requires that EPA promote "source reduction," that is, reduced use of chemicals and other substances and the promotion of recycling. EPA has an entire program office, the Office of Pollution Prevention, dedicated to this task.<sup>21</sup> The office builds public-private partnerships with businesses, nonprofits, and local governments to meet its goal of pollution prevention. In addition, PPA requires industrial firms to submit a pollution prevention report be included alongside reports filed under another law: the Emergency Planning and Community Right to Know Act, which requires reporting of chemical releases and chemical use under the Toxic Release Inventory program.

In addition, changes to the federal Superfund law—the Superfund Amendments and Reauthorization Act—were passed as part of the 1986 Omnibus Reconciliation. This provision created major changes in

*In a few cases, water projects involve considerable controversy, such as the Animas La Plata water project, which both environmentalists and free-market advocates have criticized as pork barrel projects that harm the environment.*

environmental policy, creating the Emergency Planning and Community Right to Know Act, which set up EPA's Toxics Release Inventory program.

While this data set does not cover the several important laws passed during appropriations, it still provides a fairly comprehensive picture of environmental policy making over a 32-year period.

After laws were categorized according to significance, each was then categorized according to the extent to which it serves a progressive environmental agenda. Laws that were deemed more progressive than not were categorized as progressive. Laws that reduced environmental controls—either by facilitating resources use, divesting federal ownership, or devolving authorities to the states—were dubbed as non-progressive. Environmentalists might call the second category environmental “roll-backs,” but that term is too politically loaded for this analysis. In addition, the category is actually much broader and it ended up including many non-controversial activities.

Another category, dubbed “minor,” includes laws that have little public policy significance. Finally, laws whose impact was too difficult to judge were placed in a category labeled “unclear.” This category includes laws that involve water resources. These are a mixed bag environmentally as some provisions include environmental protections and conservation, while others are designed primarily as public works water projects. The Water Resources and Development Act, while it contains many environmental policies and is usually non-controversial, might not fit clearly into a progressive environmental agenda category. In a few cases, water projects involve considerable controversy, such as the Animas La Plata water project, which both environmentalists and free-market advocates have criticized as pork barrel projects that harm the environment. To avoid confusion, water projects, included the Water Resources Development Act, were categorized as “unclear.”

Also categorized as “unclear” are laws providing federal approval of state compacts. Many of these likely serve a progressive environmental agenda but some may work against it. These laws allow states to address an issue, but they do not necessarily devolve power to the state level. Environmentalists might find some of these laws valuable, while others may run contrary to their goals. Accordingly, for simplicity purposes, these are all deemed unclear as to their nature as progressive or non-progressive.

Once this process was complete, the final list was cross-referenced with the League of Conservation Voters vote scores to further refine the

data. When LCV scored stand-alone bills that became public law, the group's position was cross-checked with the categories assigned to those laws. In the vast majority of cases categorizations were correct, indicating that the categorization process was on target. In a couple of cases where the law appeared to be wrongly categorized, they were appropriately redesigned based on LCV's view. Most revisions were simple, involving such things as changing "unclear" to "progressive" for bills supported by LCV. In addition, stand-alone bills scored by the LCV were all upgraded to at least the substantial category—if they weren't already so categorized—since the scoring indicates some level of importance.

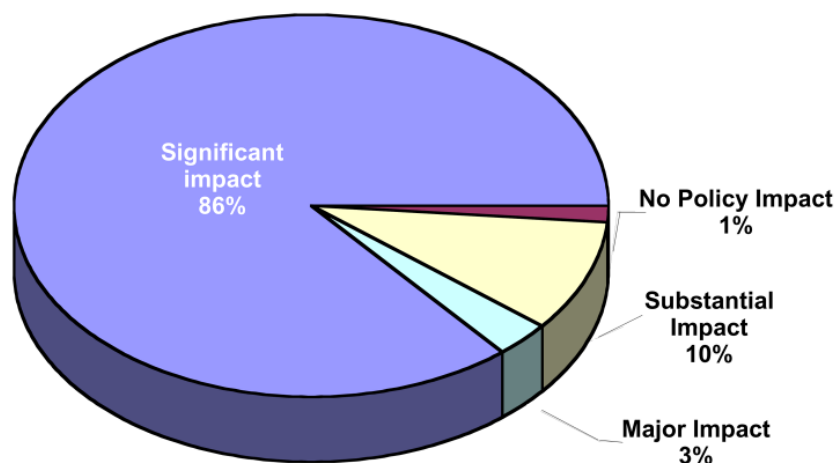
The categorization of these laws leads to some valuable insights on the direction of environmental policy during the 32-year period as well as on the direction during each Congress. This analysis should provide some idea as to whether environmental policy is in fact becoming less "green" and whether Republican control of Congress during 1994-2004 had a substantial impact in "rolling back" the environmental state, as some green activists claim.

This analysis confirms that most environmental activity was not merely symbolic, with most laws' policy impact ranking as at least significant. In fact, 99 percent of the laws examined fall within the categories of significant (86 percent), substantial (10 percent), or major (3 percent) [see figure 8]. Hence, it is fair to dismiss the idea that the bulk of environmental activity in Congress during the past 32 years was largely composed of symbolic bills.

When environmental laws are analyzed by each Congress, it appears that while there were some ups and downs starting in the Reagan

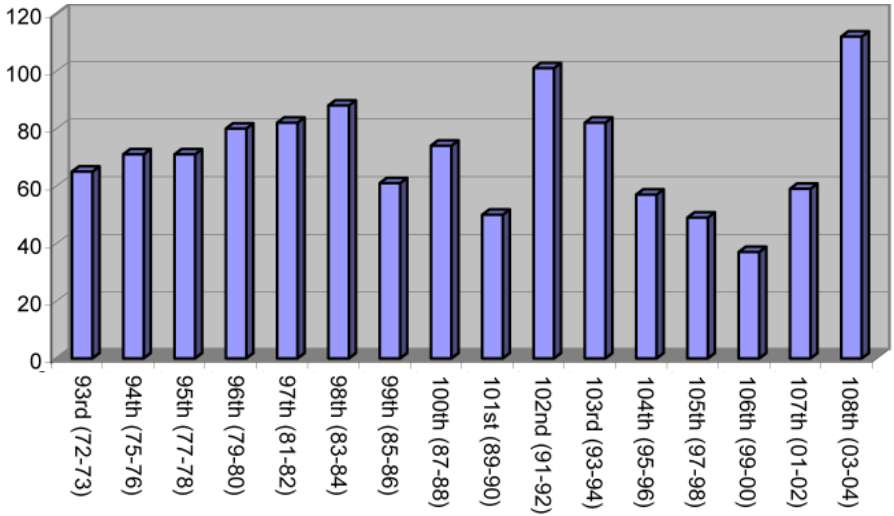
*It is fair to dismiss the idea that the bulk of environmental activity in Congress during the past 32 years was largely composed of symbolic bills.*

**Figure 8. Policy Impact of Environmental Laws, 1973-2004**





**Figure 9. Environmental Laws with Policy Impacts, By Congress 1973-2004**

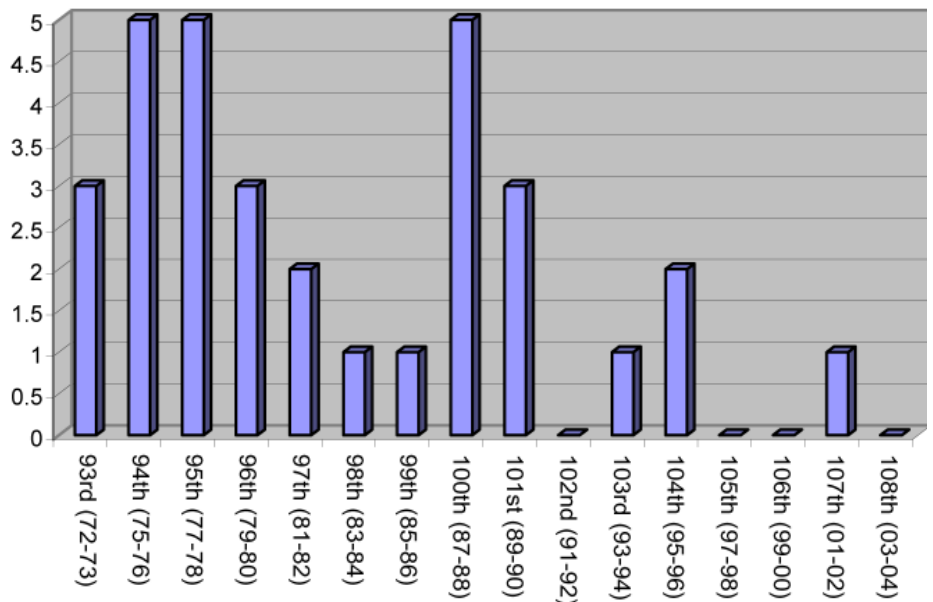


*The passage of major laws involves few bills in any case. In fact, the highest number of major bills passed in any congress is only five, which means even small changes can appear much more important than they are in reality.*

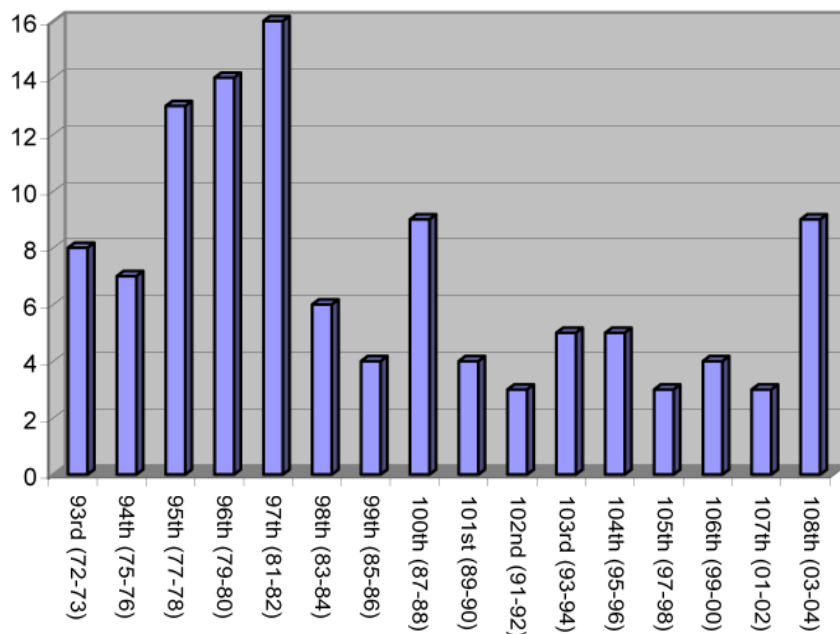
years and into the 1990s after the Republicans took over Congress, the trends do not indicate all-out gridlock [see figure 9]. A review of major and substantial laws shows that the years of Republican control of Congress might have had some impact, but the terms “gridlock” for the environmental agenda or the “death of environmentalism” are serious overstatements.

Congress did pass fewer major bills during the 1990s, with no such bills passing during the Democratic Congress in 1991-1992, as well as during Republican Congresses in 1997-1998 and 2003-2004 [see figure

**Figure 10. Environmental Laws with Major Policy Impacts, 1973-2004**



**Figure 11. Environmental Laws with Major to Substantial Impact, 1973-2004**



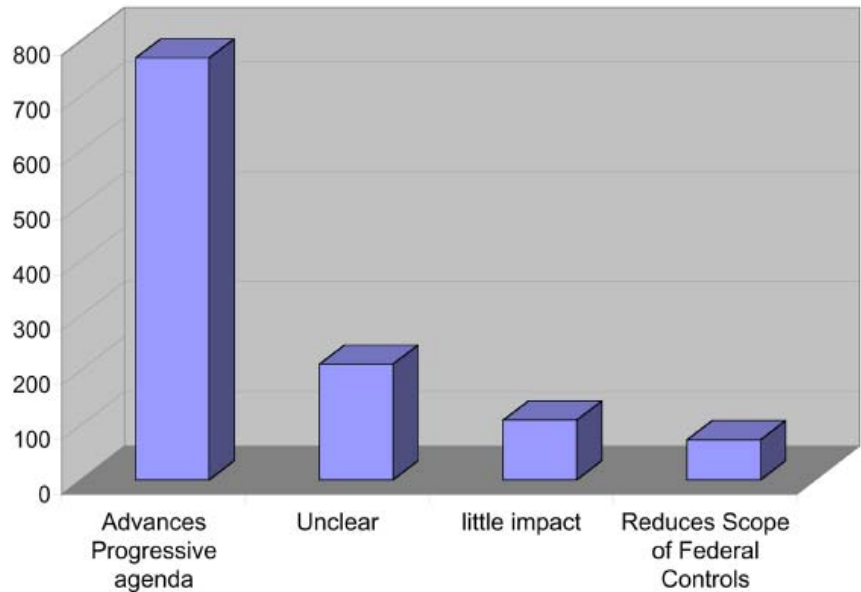
10]. Republican control in the latter years and resulting conflict with the Clinton Administration on environmental issues probably explains some of these low numbers. However, such impacts should not be overstated since the passage of major laws involves few bills in any case. In fact, the highest number of major bills passed in any congress is only five, which means even small changes can appear much more important than they are in reality. In fact, when substantial bills are included, the recent trend toward fewer bills appears to be less substantial. When all environmental bills impacting policy are included, the trend almost disappears [see figure 11]. In fact, with these larger samples of bills, there does not appear to be much of a difference between Republicans and Democrats during the 1980s and 1990s where the passage of laws is concerned.

In addition, one should expect the number of major and substantial bills to decline over time in any case. Before the 1970s there were few such laws on the books. Accordingly, in the 1970s members of Congress passed environmental laws to fill a void, which, once filled, demanded less attention. The focus then shifts toward reauthorizing and/or reforming the old laws. And while passage of the bills was initially popular, implementation issues and the emergence various affected constituencies have helped to erode that support. But does that mean that the environmental movement is in inexorable decline? Not necessarily.

Once the laws are on the books, environmental pressure groups can use their political influence to prevent efforts to shift the debate back

*Once the laws are on the books, environmental pressure groups can use their political influence to prevent efforts to shift the debate back in a more conservative approach. Indeed, that appears to be what has happened.*

**Figure 12. Political Direction of Environmental Public Laws, 1972-2004**



*The review and categorization of environmental laws as progressive or non-progressive shows that the vast majority of environmental laws on the books do in fact serve the progressive environmental agenda.*

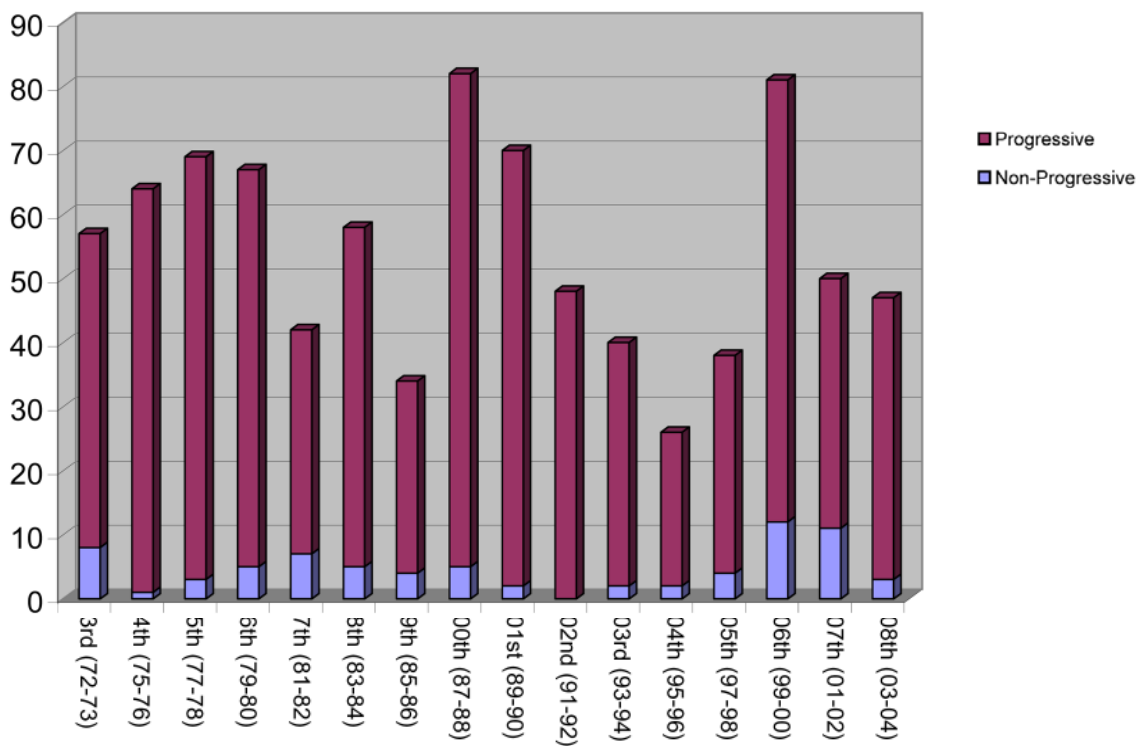
in a more conservative approach. Indeed, that appears to be what has happened. In that case, the failure of Republicans to pass a lot of major bills in recent years likely reflects the of the environmental movement’s success rather than its failure. Indeed, Republicans attempted to revise a series of environmental laws—such as bills on property rights and Clean Water Act reforms—when they took majority control of Congress, but all major efforts in the environmental field failed.

The next question to consider is whether these laws served the progressive environmental agenda, were policy neutral, or shifted the agenda in a more conservative direction. After all, the mere volume of environmental laws doesn’t reveal environmental lobbyists’ position on them.

The review and categorization of environmental laws as progressive or non-progressive shows that the vast majority of environmental laws on the books do in fact serve the progressive environmental agenda [see figure 12]. Out of the 1,163 laws on the books, 795 were progressive, 85 reduced the scope of regulation, and 284 were either not clear as to classification or had little impact in either direction. And when the laws deemed progressive or non-progressive are divided out by congress, it become clear that the vast majority of environmental laws are progressive in nature in every congress, irrespective of which political party was in control [see figure 13].

It is important to note that nearly all of the “non-progressive” laws are those with the least impact on public policy. In fact, many

**Figure 13. Progressive Nature of Environmental Law**



involve conveyances of small parcels of land. In fact, out of 147 laws in the categories of major or substantial, only 9 percent reduce the scope of government. Only one—the Marine Mammal Protection Act reauthorization<sup>22</sup>—was placed in the category of “major,” and even that bill promotes a progressive goal—it regulates fishing and other activities that impact marine wildlife. In this instance, the reauthorization was categorized as reducing the scope of government because it included a temporary, five-year exemption allowing fishermen to use methods that accidentally catch some marine mammals.

Also of note, the non-progressive bills during 1997-2000 did increase a little as can be seen on the chart. But this increase should not be overemphasized because nearly all of them were neither major nor substantial. In fact, most of these bills related to boundary changes to public lands that slightly reduced the size of certain lands. By no stretch of the imagination do they represent anything that activists could fairly characterize as an environmental regulatory “rollback.”

According to evidence analyzed, during the 1980s conflict-ridden environmental policy impacted the volume of laws coming out of Congress.<sup>23</sup> Years of controversy were followed by increased legislative activity. After several years of policy battles during the Reagan Administration, the passage of major legislation ballooned in 1987 and 1988. In addition, a similar case could be made for the 104<sup>th</sup> Congress

*Who would have predicted that environment would prove to be the leading area of policy making activity (excluding symbolic legislation) during the last couple of decades?*

(1995-1996), which was full of controversy, yet somehow produced two major environmental bills—the Food Quality Protection Act and the Safe Drinking Water Act Amendments of 1996—at the end of its second session. The passage of these bills might relate to members’ desires to deflect accusations of having had an “anti-environment” record during the first half of that Congress. However, when all environmental legislation is considered these trends almost disappear, indicating that there was still a steady stream of environmental policy making—albeit not major—even during years of controversy.

### **III. Conclusion**

The data reviewed in this study highlights the impressive scope of environmental legislative accomplishment, which occurred as the environmental movement raised public consciousness on these issues. But who would have predicted that environment would prove to be the leading area of policy making activity (excluding symbolic legislation) during the last couple of decades?

The importance of environmental issues vis-à-vis other issues was demonstrated in two separate analyses: one focused on committee actions on public laws in 12 Congresses and another on manual coding of public laws from each of 16 Congresses. These results are even more impressive when one remembers that, in both analyses, the issue of “environment” competed with substantially broad categories. For example, environmental issues were the topic of more bills than all the bills in the mega-category covering all social, public health, and welfare issues—everything from crime and abortion to health care policy.

The data also confirm that an overwhelming majority of these environmental laws involved laws that had tangible policy implications—rather than laws that were largely symbolic or of minor importance. These laws, for the most part, also move the issue in a progressive direction for nearly the entire time frame involved. Even when limited government advocates attempt to challenge environmental policy programs, the final legislative outcomes are mostly progressive in nature.

The League of Conservation Voters’ scoring demonstrates that environmental lobbying efforts are strategic and well organized, addressing issues at a very detailed level. In addition, it showed that even in close votes, environmentalists often win—a majority of the time in eight out of 17 congresses and 43 percent of these votes overall.

Finally, the data indicate that the environmental movement has experienced some challenges in recent years, yet resulting policy continues to serve progressive goals. Major initiatives aimed at overhauling and redirecting environmental policy in a more conservative direction have largely failed, and laws that have passed are largely progressive in nature. Environmental activists may not yet have met their goal of transforming civilization, but they have had major important impact in Washington—one with substantial staying power.

## Notes

- 1 For example, see Michael Kraft, "Environmental Gridlock: Searching for Consensus in Congress," in *Environmental Policy in the 1990s: Toward a New Agenda*, 2d. edition (Washington, D.C.: Congressional Quarterly Press, 1994), 99.
- 2 Michael Shellenberger and Ted Nordhaus, "The Death of Environmentalism: Global Warming Politics in a Post-environmental World," released at an October 2004 meeting of the Environmental Grantmakers and posted online at [www.grist.org](http://www.grist.org), <http://www.grist.org/cgi-bin/printthis.pl?uri=/news/maindish/2005/01/13/doe-reprint/index.html>
- 3 Ibid.
- 4 Ibid.
- 5 Carl Pope, "And Now for Something Completely Different: An in-depth response to 'The Death of Environmentalism,'" *Grist Magazine*, January 13, 2005, <http://www.grist.org/news/maindish/2005/01/13/pope-reprint>
- 6 Ibid.
- 7 Shellenberger and Nordhaus, "The Death of Environmentalism."
- 8 Kraft, "Environmental Gridlock: Searching for Consensus in Congress," 99.
- 9 Riley E. Dunlap and Michael Patrick Allen, "Partisan Differences on Environmental Issues: A Congressional Roll Call Analysis," *Western Political Quarterly* 29, no. 3 (September 1976): 386-397.
- 10 Jerry W. Calvert, "Party Politics and Environmental Policy," in *Environmental Politics and Policy: Theories and Evidence*, ed. James P. Lester (Durham: Duke University Press, 1989), 167.
- 11 For example, the League of Conservation Voters defines itself as "the political voice of the national environmental movement," <http://www.lcv.org/about-lcv>.
- 12 Raymond Tatalovich and Mark J. Wattier, "Opinion Leadership," in *The Environmental Presidency*, ed. Dennis L. Soden (Albany: State of New York University Press, 1999), 177.
- 13 Michael Kraft, "Congress and Environmental Policy," in *Environmental Politics and Policy: Theories and Evidence*, ed. James P. Lester (Durham: Duke University Press, 1989), 185.
- 14 *National Environmental Score Card* (Washington, D.C.: League of Conservation Voters, editions 2004, 2003, 2002, 2001, 2000, 1999, 1998, 1997, 1996, 1995, 1994, 1993, 1992, 1991, 1990, 1989, 1987-1988, 1985-1986, 1983-1984, 1982, 1981, 1980, 1979 [House], 1977-78 [Senate], 1976 [House], 1975 [House], 1974 [House], 1973 [House], 1971-1972 [Senate], 1972 [House], 1971 [House]), <http://www.lcv.org/scorecard/past-scorecards>.
- 15 National Environmental Scorecard 2002 (Washington, D.C.: League of Conservation Voters, 2002), p. 15, <http://www.lcv.org/images/client/pdfs/scorecard02final.pdf>.
- 16 The Small Business Protection Liability Act, Public Law No: 107-118.
- 17 Betsy A. Cody, "Major Federal Land Management Agencies: Management of Our Nation's Lands and Resources," (Washington, Congressional Research Service, May 15, 1995).
- 18 Percent included in the wilderness data on [www.wilderness.net](http://www.wilderness.net).
- 19 Michael O'Grady, *Environmental Law Deskbook, 7th Edition* (Washington, D.C. Environmental Law Institute, 2002).
- 20 Public law 101-508, OPA is codified as 42 USC 13101-13109.
- 21 See <http://www.epa.gov/oppt/p2home>.
- 22 Public Law No: 100-711.
- 23 Kraft, "Congress and Environmental Policy," 197, 199; Robert Cameron Mitchell, "Public Opinion and Environmental Politics in the 1970s and 1980s," in *Environmental Politics in the 1980s: Reagan's New Agenda*, ed. Norman Vig and Michael Kraft (Washington, D.C.: Congressional Quarterly Press, 1984), 51-74; Riley E. Dunlap, "Public Opinion and Environmental Policy," in *Environmental Politics and Policy: Theories and Evidence*, ed. James P. Lester (Durham: Duke University Press, 1989), 85-134.





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Angela Logomasini is Director of Risk and Environmental Policy at the Competitive Enterprise Institute (CEI). At CEI, Angela conducts research and analysis on environmental regulatory issues. She is co-editor of CEI's book *The Environmental Source*, and her articles have been published in the *Wall Street Journal*, *New York Post*, *Washington Times*, and other newspapers. Angela also makes regular appearances on media programs. She has appeared on dozens of radio shows, including the Diane Rehm Show, CNN Radio, and Radio America. Television appearances include CNBC's "Capitol Report," CNN, and Houston PBS.

Angela served as Legislative Assistant to Senator Sam Brownback from 1996-1998, advising the senator on energy and environmental issues. Before that she was Environmental Editor for the Research Institute of America (RIA), where she and another editor developed a three-volume environmental compliance desk reference, written for RIA affiliate Clark Boardman Callahan. From 1989 to 1994, Angela worked for Citizens for a Sound Economy (CSE), serving as Director of Solid Waste Policy for a CSE affiliate, Citizens for the Environment and as a policy analyst covering various economic issues.

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