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## **Rousing the Restless Majority: The Need for a Blue-Green-Brown Alliance**

The environmental movement is at a crossroads. For the first time in modern history, the bipartisan national consensus that led to our strong system of environmental protections has fallen apart. To confront this challenge successfully, the environmental movement must expand its strategies beyond lobbying and litigation and return to direct grassroots organizing. The logical place to begin is in the communities most adversely affected by environmental hazards—communities of color and labor. Ironically, these are precisely the communities that have often been ignored or even alienated by the American environmental movement.

The Bush administration has proposed to roll back virtually every significant environmental law enacted in the past thirty years: the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, the Endangered Species Act, the National Forest Management Act, and many others. In all, the administration has proposed over 200 rollbacks of environmental laws.<sup>1</sup> A few examples are highlighted in the following paragraphs.

On New Year's Eve 2002, the Bush administration finalized regulations virtually to eliminate the heart of the Clean Air Act—a

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<sup>1</sup> See ROBERT PERKS ET AL., NATURAL RESOURCES DEFENSE COUNCIL, REWRITING THE RULES: THE BUSH ADMINISTRATION'S ASSAULT ON THE ENVIRONMENT (Natural Resources Defense Council 2002) available at <http://www.nrdc.org/legislation/rollbacks/rollbacks.pdf> (last visited Oct. 27, 2004) [hereinafter NRDC]; Robert F. Kennedy, Jr., *Crimes Against Nature*, ROLLING STONE, Dec. 11, 2003; Bill Lockyer, *California's Thin Green Line: The State's Battle to Maintain Environmental Protections in the Face of Federal Rollbacks*, (Feb. 10, 2003), available at <http://www.faultline.org/news/2003/02/lockyer.html> (last visited Sept. 5, 2004).

program known as New Source Review (NSR).<sup>2</sup> NSR requires old, dirty refineries and power plants to install modern pollution controls when they upgrade and expand.<sup>3</sup> Pre-1977 power plants emit four to ten times more pollution per megawatt than modern plants, and are responsible for seventy to eighty percent of power plant emissions.<sup>4</sup> As a result of the changes enacted by the Bush administration, most of these facilities will never have to install modern pollution control equipment.<sup>5</sup> According to the National Academy of Sciences, the rollbacks will cause 30,000 Americans to die prematurely each year.<sup>6</sup>

The Bush administration has gutted a Clinton-era plan that would have reduced mercury emissions by ninety percent. In its place, the administration has proposed a “voluntary” pollution trading program that will allow companies to release mercury so long as they pay for pollution trading credits.<sup>7</sup> Mercury is a potent neurotoxin known to cause brain damage and birth defects, among many other health impacts.<sup>8</sup> The administration has even attempted to reclassify mercury as “non-toxic,” despite its well-documented toxicity.<sup>9</sup>

Under the name of “Healthy Forests,” the Bush administration has proposed to allow virtually unchecked clear-cutting of ancient forests and fire-resistant old-growth trees in pristine National Forests.<sup>10</sup>

Under an unduly expansive interpretation of a Supreme Court case, the Bush administration has eliminated federal protections for many of the nation’s waters that comprise habitat for fish, birds, and riparian vegetation.<sup>11</sup> These waters, called isolated wetlands and vernal pools, are critically important habitat for many endangered species.

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<sup>2</sup> 40 C.F.R. §§ 51.165, 51.166, 52.21 (2003).

<sup>3</sup> Richard Toshiyuki Drury and A.J. Napolis, *Curbs on Clean Air, RACE, POVERTY & THE ENV’T* at 17 (Fall 2004); Bruce Barcott, *Changing All the Rules*, N.Y. TIMES, Apr. 4, 2004, § 6 (Magazine), at 38.

<sup>4</sup> *Id.*

<sup>5</sup> Drury & Napolis, *supra* note 3.

<sup>6</sup> Kennedy, *supra* note 1.

<sup>7</sup> *Id.*; Clifford Rechtschaffen, *The Bush Record on the Environment: What a Difference Two Years Make*, CLASS ACTION (Spring 2003), available at [http://www.ggu.edu/viewAttachment/23/class\\_action\\_spring\\_2003.doc](http://www.ggu.edu/viewAttachment/23/class_action_spring_2003.doc) (last visited Sept. 5, 2004).

<sup>8</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, MERCURY STUDY REPORT TO CONGRESS, EPA-452/R-97-007 (Dec. 1997), available at <http://www.epa.gov/airprog/oar/mercury.html> (last visited Sept. 5, 2004).

<sup>9</sup> NRDC, *supra* note 1.

<sup>10</sup> *Id.*; Rechtschaffen, *supra* note 7.

<sup>11</sup> NRDC, *supra* note 1; Rechtschaffen, *supra* note 7.

In one of its most visible about-faces, the Bush administration pulled out of the Kyoto Protocol global warming treaty, despite repeated campaign promises to support the treaty. The administration went so far as to thwart a bipartisan congressional attempt to increase fuel efficiency standards,<sup>12</sup> and has even declared that carbon dioxide, the primary cause of global warming, is not a pollutant. The administration's denial of global warming has drawn criticism from more than twenty Nobel Laureates and even the National Academy of Sciences.<sup>13</sup>

In the face of this full frontal assault on our thirty-year-old system of environmental laws, the American environmental movement has been like a deer caught in the headlights. While some of the major organizations, such as the Natural Resources Defense Council and the Sierra Club, have been highly critical of the Bush administration, they have been largely ineffective at minimizing the damage. The primary reason for this lack of effectiveness is that the mainstream environmental movement has largely abandoned its grassroots base in favor of a strategy of lobbying and litigation.

For the past thirty years, the environmental movement has relied, fairly successfully, on a strategy of lobbying and litigation. This strategy successfully brought us a host of strong environmental laws and successfully fought off attempts by the Reagan administration to gut many of those same laws.

However, the strategy of lobbying and litigation depended on there being at least one friendly governmental body—either the Senate, the House, the White House, or the courts. Today, all of those entities are in the hands of forces hostile to the fundamental goals of the environmental movement. For the first time since 1954, the White House and both houses of Congress are in the hands of the Republican Party. A Republican Party that is now unified in its commitment to undermine the hard-fought environmental protections of the past thirty years. Pro-environment “Teddy Roosevelt” Republicans like Jim Jeffords have mostly been exiled from the party.

Even the “least dangerous branch,” the judiciary, has been on an activist crusade to thwart the will of Congress by erecting increasingly higher barriers to environmental enforcement—primarily through Justice Scalia’s bastardization of the standing doctrine. Years before taking a seat on the Supreme Court, Justice Scalia wrote an

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<sup>12</sup> NRDC, *supra* note 1; Rechtschaffen, *supra* note 7.

<sup>13</sup> NRDC, *supra* note 1.

article in the Suffolk University Law Review explaining how the doctrine of Constitutional standing could be expanded to foreclose most public interest litigation while still leaving the courts open to polluters and other corporate interests seeking to challenge regulations.<sup>14</sup> In that article, Justice Scalia openly complained about the rise of public interest law firms, and about the federal judiciary's "long love affair with environmental litigation[.]"<sup>15</sup> He explained that by reframing the doctrine of standing, polluters, "the very *object* of a law's requirement or prohibition[.]" will "always" have standing.<sup>16</sup> However, the "best adversaries" for the public interest, such as the NAACP, the ACLU, and environmental groups, would most often be precluded from bringing suit at all.<sup>17</sup> Seven years later, Justice Scalia had the opportunity to erect the barriers to public interest litigation that he had discussed in the Suffolk article.

In the boldest exercise of judicial activism since *Lochner v. New York*,<sup>18</sup> Justice Scalia has thwarted congressional intent to grant broad rights to citizens to enforce environmental laws in over a dozen statutes, while allowing polluters free reign to challenge those same laws.<sup>19</sup> He has turned legislative intent on its head by making enforcement very difficult for those who seek to advance the intent of the statutes while making challenges to those statutes very easy. Not only did Justice Scalia turn the legislative intent embodied in environmental laws on its head, he also turned the very concept of standing on its head. The standing doctrine, which is based on the "cases and controversies" provision of the Constitution, was intended to ensure vigorous prosecution from true adversaries. Justice Scalia openly stated in his Suffolk article that the result of his re-interpretation of standing would be to close the courthouse doors to the "best adversaries" of the public interest.<sup>20</sup> This from a Justice

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<sup>14</sup> Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881 (1983).

<sup>15</sup> *Id.* at 884.

<sup>16</sup> *Id.* at 894.

<sup>17</sup> *Id.* at 891; see also John Echeverria and Jon Zeidler, *Barely Standing: The Erosion of Citizen "Standing" to Sue and Enforce Environmental Law*, GEO. ENVTL. L. & POL'Y INST., (June 1999), at <http://www.law.georgetown.edu/gelpi/papers/barely.html> (last visited Sept. 5, 2004).

<sup>18</sup> *Lochner v. New York*, 198 U.S. 45 (1905).

<sup>19</sup> See, e.g., *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Bennett v. Spear*, 520 U.S. 154 (1997); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998).

<sup>20</sup> Scalia, *supra* note 14, at 891.

who rails against activist judges. As Justice Stevens explained in *Steel Co. v. Citizens for a Better Environment*, “It is this Court’s decision, not anything that Congress or the Executive has done, that encroaches on the domain of other branches of the Federal Government . . . . It is thus quite clear that the Court’s holding today represents a significant new development in our constitutional jurisprudence.”<sup>21</sup>

As a result of these judicial and legislative developments, even when a case comes before a sympathetic judge, his or her hands are tied because Congress has eliminated the very environmental laws on which a case is based, or the plaintiff cannot satisfy the new standing requirements expressly intended to foreclose public interest litigation.

My point is not to convince you all to choose different career paths, but rather to convince you that this situation should not be possible in America. A 2001 Gallup poll found that eighty-one percent of Americans support stronger environmental standards.<sup>22</sup> Only eleven percent believe that environmental laws are too stringent.<sup>23</sup> A 2004 poll performed for the Pew Research Center for the People and the Press found that eighty-six percent of Americans favor more stringent environmental protections.<sup>24</sup> The Bush administration’s free market policies that allow polluters to buy and sell pollution, deemed “Enron Environmentalism” by the Sierra Club’s Carl Pope, are even less popular. An overwhelming percentage of voters, eighty-eight percent, believe that air and water belong to everyone; only seven percent say air and water belong to their users and that they have a right to buy and sell pollution rights.<sup>25</sup> Given these numbers, it should be politically impossible for any party to take an anti-environment position.

The reason for this apparent anomaly is displayed in a final poll number. Even though eighty-six percent of Americans favor strict environmental laws, only half that number consider themselves

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<sup>21</sup> *Citizens for a Better Env’t*, 523 U.S. at 130-31; see Cass R. Sunstein, *What’s Standing After Lujan? Of Citizen Suits, “Injuries,” and Article III*, 91 MICH. L. REV. 163 (1992).

<sup>22</sup> Barcott, *supra* note 3.

<sup>23</sup> *Id.*

<sup>24</sup> THE PEW RESEARCH CTR. FOR THE PEOPLE AND THE PRESS, THE 2004 POLITICAL LANDSCAPE: EVENLY DIVIDED AND INCREASINGLY POLARIZED 75 (Nov. 5, 2003), available at <http://people-press.org/reports/pdf/196.pdf> (last visited Sept. 5, 2004).

<sup>25</sup> LAKE SNELL PERRY & ASSOCIATES, PERCEPTIONS OF AIR QUALITY AND POLITICAL PLAYERS ON THE ENVIRONMENT (Oct. 3, 2003), at <http://www.cleanairtrust.org/survey.03omnimemo.html> (last visited Sept. 6, 2004).

“environmentalists.”<sup>26</sup> In other words, not only has the environmental movement failed to build upon its base, it has actually alienated large portions of the American public who are generally sympathetic to its goals. Explaining this last poll number is the key to maintaining the viability of the environmental movement in the twenty-first century.

Why has the environmental movement failed to reach the overwhelming majority of Americans who are sympathetic to its goals? I submit that a large part of the answer to this question is rooted in the unique cultural history of American environmentalism. There is a long history to the development of American environmentalism as an essentially elitist movement. The movement has its origins in the preservationists of the Sierra Club, mostly hikers, and the conservationists of the National Wildlife Federation, largely hunters and fishers. Both groups were almost exclusively white, leisure-class movements, whose members had sufficient resources and free time to enjoy an “environment” that was someplace else.

As Mark Dowie writes in his excellent book, *Losing Ground*:

The essential activism of environmentalism has thus differed significantly from other American social and political movements. It was not, like the labor, civil rights, or women’s movements, a rebellion forged in oppression . . . . Quite the contrary. [American environmentalists] were landed hunters and fishermen inspired by apolitical naturalists to protect the sources of their aesthetic pleasure . . . .<sup>27</sup>

For much of its early history, the mostly-white Sierra Club required two sponsors for membership.<sup>28</sup> Many environmental organizations had similar barriers, or even express “whites only” provisions.<sup>29</sup>

This elitist legacy has proven hard to shake. But as we approach the point where a majority of the population is “minority,” the very existence of the environmental movement depends on it. To respond to this challenge, the environmental movement must add community organizing to its list of strategies, along with lobbying and litigation.

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<sup>26</sup> THE PEW RESEARCH CTR. FOR THE PEOPLE AND THE PRESS, RETRO-POLITICS: THE POLITICAL TYPOLOGY: VERSION 3.0 (Nov. 11, 1999), *available at* <http://people-press.org/reports/print.php3?ReportID=50> (last visited Sept. 6, 2004).

<sup>27</sup> MARK DOWIE, *LOSING GROUND: AMERICAN ENVIRONMENTALISM AT THE CLOSE OF THE TWENTIETH CENTURY* 3 (MIT Press 1995).

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.*

The most logical place to start this organizing is in the communities most directly affected by environmental hazards—low-income communities, communities of color, and labor. Study after study has demonstrated that these communities suffer disproportionately from the effects of environmental hazards.

In 1987, the United Church of Christ Commission for Racial Justice report showed that the most significant factor in determining the location of hazardous waste facilities was race.<sup>30</sup> The study found that three out of five commercial waste dumps are located in African American or Latino communities. Sixty percent of all African Americans and Latinos and fifty percent of Asians live in communities with uncontrolled toxic waste sites.<sup>31</sup> In 1992, a National Law Journal report found that penalties imposed for environmental violations in minority communities were five times lower than penalties for the same violations in white communities.<sup>32</sup> Communities in which incinerators are located have eighty-nine percent more people of color than the national average.<sup>33</sup> Asthma kills five times as many African Americans as whites.<sup>34</sup> Asthma hospitalization rates are up to ten times higher for African American children than for white children.<sup>35</sup>

Blue-collar working people are also disproportionately impacted by environmental hazards. Workers are generally exposed to toxic chemicals at levels many times higher than the general public, and many times higher than even nearby residents. Occupational diseases kill 60,000 American workers each year<sup>36</sup>—more than are killed by handguns. “[W]orkplace conditions cause an estimated 350,000 new cases of serious illnesses each year.”<sup>37</sup> When industrial accidents occur, they usually affect workers first and worst.

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<sup>30</sup> COMMISSION FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON THE RACIAL AND SOCIOECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES xiii (1987).

<sup>31</sup> *Id.* at xiv.

<sup>32</sup> Marianne LaVelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, NAT’L L.J., Sept. 21, 1992, at S1.

<sup>33</sup> DOWIE, *supra* note 27, at 145.

<sup>34</sup> *Id.* at 145-46.

<sup>35</sup> CALIFORNIA DEP’T OF HEALTH SERVS., CALIFORNIA COUNTY ASTHMA HOSPITALIZATION CHART BOOK (August 2000).

<sup>36</sup> DOWIE, *supra* note 27, at 158.

<sup>37</sup> *Id.*

It should not be surprising to learn that communities of color and working people are far more supportive of the goals of the environmental movement than wealthier white voters. Members of labor unions are sixty-two percent more likely than the general population to oppose Bush administration proposals to roll back regulations on smoke stack industries, while African Americans are forty-six percent more likely than the general population to oppose the rollbacks.<sup>38</sup> These groups are also willing to vote in accordance with their environmental values. While only thirty-one percent of the general public would be less likely to vote for a candidate that supports Bush administration environmental rollbacks, fifty-four percent of labor union members would be less likely to support such a candidate.<sup>39</sup>

It seems clear that communities of color and labor unions should be the core constituency of the environmental movement. However, quite ironically, the environmental movement has built its base in upper-middle-class white communities—one of the most hostile demographic groups to the goals of the environmental movement. This is rather like the Republican Party attempting to build its core constituency in the gay and lesbian community. While there may be a few Log Cabin Republicans, the community as a whole is not inclined to be the most receptive to Republican politics.

The silver lining is that, given the natural inclination of communities of color and labor union members to support the goals of the environmental movement, reaching out to these communities should be relatively easy. In a sense, the hard work of organizing wealthy whites has already been done over the past one hundred years. Now it is time to do the comparatively easy work of organizing people who are directly impacted by pollution.

Unfortunately, a one-hundred-year history of being a virtually all-white movement comes with a lot of baggage. The mainstream environmental movement has sometimes gone out of its way to ignore, or even alienate, communities of color and labor. Some of the alienation has been a result of the elitist legacy discussed above. Some has been cultural “eco-fascism” that shuns anyone who is not a dreadlock-wearing vegan. But some of the reasons have been substantive: egregious examples such as the placing of spikes in trees to injure loggers; the environmental movement’s support for the

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<sup>38</sup> LAKE SNELL PERRY & ASSOCIATES, *supra* note 25.

<sup>39</sup> *Id.*

North American Free Trade Agreement, despite the fact that it was bad for both labor and the environment (with the notable exception of the Sierra Club); anti-immigrant positions taken by many Sierra Club chapters and other environmental groups that turn the concept of “think globally, act locally” on its head; focusing almost all resources on the preservation of pristine areas that most low-income people are never able to visit, while often ignoring serious environmental problems facing low-income communities of color such as toxic waste contamination and industrial pollution.

Overcoming this elitist history is essential to the continuation of the environmental movement.

The environmental justice movement has proven that communities of color are natural environmentalists when approached in a culturally competent manner. The movement has made great progress in expanding the base of the environmental movement into communities of color. A vibrant body of academic literature has developed in the field of environmental justice.<sup>40</sup>

Communities of color and low-income communities have turned out to be natural advocates for environmental rights, and have generated some of the most articulate spokespersons for environmental protection because they are speaking from a life-and-death need to protect the health of their own families and communities. At Communities for a Better Environment (CBE), where I was an attorney and legal director for ten years, organizers conducted direct door-to-door organizing in housing projects and very low-income neighborhoods near the Bay Area and Los Angeles refinery corridors and near the power plants in southeast San Francisco and southeast Los Angeles counties.

Community members, speaking from a lived experience of environmental injustice, have become far more articulate spokespersons for environmental protection than professional environmentalists could ever be. In the small southeast Los Angeles city of Santa Fe Springs, mostly Latino community members held rallies, demonstrations, and press conferences, and worked together with CBE’s lawyers and scientists to thwart the plans of televangelist

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<sup>40</sup> See, e.g., ROBERT D. BULLARD, *DUMPING ON DIXIE: RACE, CLASS AND ENVIRONMENTAL QUALITY* (1990); Luke W. Cole, *Environmental Justice Litigation: Another Stone in David’s Sling*, 21 *FORDHAM URB. L.J.* 523 (1994); Gerald Torres, *Environmental Burdens and Democratic Justice*, 21 *FORDHAM URB. L.J.* 431 (1994); Rachel D. Godsil, *Remedying Environmental Racism*, 90 *MICH. L. REV.* 394 (1991); Robert D. Bullard, *Race and Environmental Justice in the United States*, 18 *YALE J. INT’L L.* 319 (1993).

Rev. Pat Robertson to re-open the dirtiest refinery in the state.<sup>41</sup> While environmental regulators and federal judges were persuaded by the legal and technical arguments, the direct involvement of the breathing public made the regulators, the media, and even the judges take notice and recognize the importance of the case in terms of the lives of real people.

In the small town of Kettleman City, in California's Central Valley, immigrant farmworkers were able to work with lawyers from the Center on Race, Poverty, and the Environment to foil the plans of the largest waste disposal company in the world, Waste Management, to site a hazardous waste incinerator.<sup>42</sup>

CBE worked with community members from the largely African American community of North Richmond to force the massive Chevron refinery to install modern pollution control equipment to reduce refinery emissions by one-third, and also to provide \$2.1 million to establish a community health clinic for the under-served neighborhood.<sup>43</sup> This result was only possible as a result of hundreds of community members attending city council, planning commission, and even air district hearings. A judge could not have ordered the type of results obtained, but the active involvement of hundreds of community members forced political officials to take action.<sup>44</sup>

CBE has made tremendous progress by bringing people who are directly affected by pollution to tell their stories to air district boards, water boards, county boards, and city councils. At these agencies, environmental decisions have been made by people who profit from pollution and their lawyers, politicians who receive contributions from polluters if they vote the "right way," and sometimes, professional environmentalists. These agencies almost never hear from people who actually suffer from pollution.

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<sup>41</sup> See, Greg Winter, *Grand Plan Haunts Pat Robertson*, N.Y. Times, Feb. 3, 2002, at A22; Daniel Roth, *Pat Robertson's Quest for Eternal Life*, Fortune, June 10, 2002, at 132; *Cmtys. for a Better Env't v. Cenco Ref. Co.*, 179 F. Supp. 2d 1128 (C.D. Cal. 2001); *Cmtys. for a Better Env't v. Cenco Ref. Co.*, 180 F. Supp. 2d 1062 (C.D. Cal. 2001).

<sup>42</sup> LUKE W. COLE & SHEILA R. FOSTER, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (N.Y. Univ. Press 2001); see also Robert D. Bullard, *Anatomy of Environmental Racism and the Environmental Justice Movement*, in *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS* 29, 32-33, 37-38 (Robert D. Bullard ed., 2001); Vernice D. Miller, *Planning, Power and Politics: A Case Study of the Land Use and Siting History of the North River Water Pollution Control Plant*, 21 *FORDHAM URB. L.J.* 707 (1994).

<sup>43</sup> Richard Toshiyuki Drury & Flora Chu, *From White Knight Lawyers to Community Organizing*, RACE, POVERTY & THE ENV'T 54 (Fall 1994).

<sup>44</sup> *Id.*

Although the environmental laws created a panoply of regulatory agencies, these public agencies rarely hear from the breathing public. In fact, most of the public does not even know that the agencies exist at all. When CBE brought over one hundred low-income refinery neighbors to a meeting of the Bay Area Air Quality Management District to demand improved refinery regulations, hired guards blocked the public from entering the “public” meeting.<sup>45</sup> After the chanting community members literally forced their way into the hearings, they told personal stories of loved ones who suffer from asthma, cancer, and other ailments linked to air pollution. Unaccustomed to the scrutiny of the news media, the air district board eventually acquiesced and adopted first in the nation controls for refinery flares and oil tankers. For over a decade the air district had resisted the pleas of professional environmentalists to adopt these very same regulations.

When CBE brought six busloads of refinery area community members to Los Angeles’ South Coast Air Quality Management District, with television news cameras rolling, they were able to persuade the body to reduce its cancer risk threshold by seventy-five percent, over stiff industry resistance. The air district even went one step further and adopted a fourteen-point environmental justice policy to address cumulative environmental risks facing heavily polluted communities of color.

While the environmental justice movement has made great progress in expanding the environmental movement into communities of color, there has been less attention focused on building “blue-green” coalitions with labor. At the first National People of Color Environmental Leadership Summit, the environmental justice movement defined the “environment” to be the places where we live, work, and play.<sup>46</sup> But while the mainstream environmental movement focused mainly on the environment where we play, the environmental justice movement has focused mainly on the environment where we live. Both have too often overlooked the environment where we work.

On a personal note, my first environmental job was putting toxic waste into fifty-five gallon drums. I was one of the guys in a toxic

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<sup>45</sup> This was based on the Author’s personal observation. *See also* Lisa Vorderbrueggen, *Agencies Approve Revised Ozone Plan*, CONTRA COSTA TIMES, July 19, 2001.

<sup>46</sup> *See* Principles of Environmental Justice, adopted at the First National People of Color Environmental Leadership Summit (Oct. 24-27, 1991), *reprinted in* DOWIE, *supra* note 27, at App. A.

waste suit and a gas mask. I decided to pursue a career in environmental law largely to address the problems that I saw first hand at that waste dump. The wide gulf between the labor and environmental movements has always baffled me.

Polluters have taken advantage of the cultural rift between labor and environmentalists, dividing and conquering to the point where labor has sometimes sided with developers and polluters against environmental protections.

Unfortunately, neither labor unions nor environmentalists have expended much energy to debunk the jobs-versus-the-environment myth. In the name of protecting American auto-worker jobs, union-backed Democratic members of Congress were critical to the defeat of new fuel efficiency standards.<sup>47</sup> Rather than viewing hybrid vehicles and other low-emission technologies as an opportunity to expand into new market sectors, unions bought the big three auto makers' arguments that American companies can only produce gas-guzzling sport utility vehicles. There is now a six month waiting list to purchase a hybrid vehicle from the only current manufacturers—Toyota and Honda. Fortunately, American companies are now belatedly entering the market.

Numerous studies have debunked the jobs-versus-the-environment myth. While there are surely some isolated examples of businesses that have closed as a result of environmental rules, every peer-reviewed study has demonstrated that environmental regulation has a positive effect on jobs. A Boston University study showed that strict air pollution regulations on Los Angeles area refineries actually had a positive impact on employment,<sup>48</sup> probably due to the hiring of people to install and maintain pollution abatement equipment. The study further found that productivity at refineries forced to install pollution control equipment was higher than at other similar refineries not subject to such regulation because the need to invest in pollution abatement equipment accelerated management decisions to invest in other more productive technology.<sup>49</sup> States with stronger environmental standards tended to have higher growth in their gross

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<sup>47</sup> E.g., *Air Pollution Gets a "Yes" Vote: U.S. Sen. Barbara Mikulski Gives Aid to Enemies of the Environment*, BALT. SUN, Mar. 18, 2002, at 12A.

<sup>48</sup> ELI BERMAN & LINDA T.M. BUI, ENVIRONMENTAL REGULATION AND PRODUCTIVITY: EVIDENCE FROM OIL REFINERIES, (Nov. 1998), available at <http://papers.nber.org/papers/w6776.pdf>. (last visited Oct. 27, 2004).

<sup>49</sup> *Id.*

state products, total employment, construction employment, and labor productivity than states that ranked lower environmentally.<sup>50</sup>

Environmental regulations create jobs: jobs designing and building environmental control equipment, jobs installing and operating that equipment, jobs cleaning up polluted sites, jobs recycling and re-using waste, and many others. Environmental regulations have created a \$27 billion industry in California alone. Eighty-nine percent of environmental jobs are in the private sector.<sup>51</sup> The only dark cloud in this picture is that due to the deregulation of the Reagan years, the United States has fallen behind in development of pollution control technology. Seventy percent of air pollution control equipment installed in the United States is now produced in foreign countries, mostly Germany and Japan.<sup>52</sup> The strict environmental regulations in those countries have made them the world's leaders in environmental technology. As countries from Thailand to China to Mexico realize a need for environmental technology, this will become an industry of almost limitless growth.

In light of these facts, a growing number of unions are recognizing that strict environmental laws and enforcement are in the interests of their members. Unions have discovered that not only can they protect the health and safety of their members through environmental enforcement, but they can also create new jobs. Unions are becoming an increasingly familiar presence at air boards, water boards, and other agencies, demanding better and stricter pollution controls and safety equipment.

The results have been dramatic. CBE received a tip from members of the longshore workers' union that Chevron, and other refiners in Los Angeles, were not using pollution control equipment on their oil tankers in violation of the Clean Air Act. That case became the largest single-source Clean Air Act victory in history, forcing Chevron to pay a \$6 million penalty, operate pollution control equipment on its oil tankers, install \$500,000 of pollution control equipment at its refinery, and fund a free health clinic at Wilmington's Banning High School.

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<sup>50</sup> Stephen M. Meyer, *Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis*, at 32-34, (Feb. 16, 1993) at <http://web.mit.edu/polisci/mpepp/Reports/eep.pdf> (last visited Sept. 6, 2004).

<sup>51</sup> ALAN GARDON, CALIFORNIA SENATE OFFICE OF RESEARCH, *MYTHS OF JOBS VS. RESOURCES: ENVIRONMENTAL PROTECTIONS AND ECONOMIC GROWTH* (Mar. 1996), available at [http://www.sen.ca.gov/sor/reports/reports\\_by\\_year/1996/9603\\_myth.txt](http://www.sen.ca.gov/sor/reports/reports_by_year/1996/9603_myth.txt) (last visited Oct. 27, 2004).

<sup>52</sup> *Id.*

In the wake of energy deregulation, a consortium of labor unions called Concerned Unions for Reliable Energy (CURE) hired Adams, Broadwell, Joseph, and Cardozo, where I now work, to participate in the environmental review process for over thirty new power plants in California. As a result of CURE's involvement, the California Energy Commission required the plants to cut their nitrogen oxide emissions by fifty percent. In the process, hundreds of good paying union jobs were created building and operating the new, cleaner power plants.

In the Bay Area, labor unions, including the pipe trades, electrical workers, boilermakers, insulators, and laborers, worked with Communities for a Better Environment and Adams, Broadwell, Joseph, and Cardozo to force the ConocoPhillips refinery to install advanced pollution control equipment. By participating in the environmental review process, and by building a strong blue-green coalition, CBE and the unions were able to force ConocoPhillips to agree to install advanced particulate controls for nitrogen oxide and other devices. Over 800 union jobs were created in the process, and the refinery will now also produce much cleaner burning "ultra-low-sulfur" fuel.

In southeast Los Angeles, the pipe trades and electrical workers unions worked with CBE and Adams, Broadwell, Joseph, and Cardozo to force the Paramount refinery to install advanced pollution control equipment. As a result of the blue-green alliance's participation in the environmental review process, the refinery will install advanced pollution controls to dramatically reduce emissions of volatile organic compounds, and will also produce cleaner burning low-sulfur fuel. The project will be built with skilled union labor.

This is a sea change from the not too distant days when it was common to see unions stand together with developers against environmentalists in favor of environmentally destructive projects.

The results of blue-green collaboration have been equally dramatic in the legislature. When labor, environmentalists, and communities of color join forces, it creates an almost unstoppable coalition. Just this year, a coalition of labor unions, environmental justice activists, and environmentalists joined forces to oppose a bill that would have "streamlined" refinery permitting and removed almost all judicial oversight of the refinery permitting process.<sup>53</sup> Due to the strength and unanimity of the coalition, and the overwhelming labor,

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<sup>53</sup> 2003 California Senate Bill No. 1636, 2003-04 Reg. Sess. (Ca. 2004).

community, and environmental opposition voiced at two public hearings, the author withdrew the bill.

In the face of Bush administration rollbacks of the Clean Air Act's New Source Review provisions, labor unions, environmentalists, and environmental justice activists came together to support California State Senate Bill 288 (S.B. 288). S.B. 288 preserved New Source Review as a matter of California state law, despite Bush administration regulations to eliminate the program at the federal level. The coalition overcame stiff opposition from industry, the Western States Petroleum Association, and the California Chamber of Commerce. Unions recognized that not only would the Bush rollbacks make refineries and power plants increasingly dirtier and more dangerous, but they would also risk losing thousands of jobs building and installing pollution control devices.<sup>54</sup> The bill passed with a margin of only a few votes. It is a near certainty that but for the strong labor-environment coalition, the bill would have failed. Several states are now attempting to enact similar legislation.<sup>55</sup>

The environmental movement need not look too far back into its history to find a working model for a blue-green coalition. The American Federation of Labor-Congress of Industrial Organizations was the single largest contributor to the very first Earth Day in 1970. At that moment in history, the environmental movement for the first time focused its energies on direct community organizing. Twenty million Americans demonstrated in the streets of almost every major city, demanding stronger environmental protections.<sup>56</sup> While it may be difficult to imagine today, given the polite professionalization of the environmental movement, in the early 1970s, the movement was seen as the next big mass movement in the model of the anti-war and civil rights movements.<sup>57</sup> Two weeks after the first Earth Day, the organizers identified the twelve most anti-environmental members of

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<sup>54</sup> Sherie Winston & Thomas F. Armistead, *EPA Moves Away from Enforcement*, ENGINEERING NEWS-RECORD, Nov. 17, 2003, at 12, available at <http://enr.construction.com/news/environment/archives/031117.asp> (last visited Oct. 27, 2004).

<sup>55</sup> *States to Propose Stricter Rules than Federal NSR Reforms*, GREENWIRE, Oct. 16, 2003.

<sup>56</sup> DOWIE, *supra* note 27, at 24.

<sup>57</sup> See generally CHARLES A. REICH, *THE GREENING OF AMERICA* (Bantam Books 1971) (1970).

Congress—the dirty dozen. By the end of the year, seven of the twelve had been defeated at the polls.<sup>58</sup>

Our basic environmental law structure that remains today was established in the wake of that first Earth Day. A pro-environmental, bipartisan consensus formed to pass the modern versions of the Clean Air Act, the Clean Water Act and the National Environmental Policy Act. Richard Nixon signed the acts into law and established strong regulatory frameworks not because he loved the environment, but because it was politically impossible for him to do otherwise.

Since that time the environmental movement has largely abandoned community organizing and become increasingly focused on inside the beltway lobbying and litigation. At this point in time, when every branch of government is hostile to the goals of the environmental movement, it is critical for the movement to rebuild and expand upon the coalition that made the first Earth Day such an overwhelming success—to mobilize the overwhelming majority of Americans who support strong environmental protections.

The environmental justice movement has made significant strides in building a base for the environmental movement in communities of color. It is now necessary for environmentalists to build a blue-green coalition with labor. In the face of such a broad-based coalition, no President, no Congress, and no judiciary can ignore the eighty-six percent of Americans who support a clean, safe environment and clean, safe jobs.

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<sup>58</sup> Pete McCloskey, *We Must Again Reclaim Earth from All Exploiters*, S.F. CHRON., Apr. 18, 2004, at E3.