“Unquestionably, the public must not only be allowed to participate in environmental decision making; it should be encouraged to do so. … In a democracy the basic value judgments on the quality of life rest with the citizen.”


A little over fifty years ago, William Ruckelshaus, then the first-appointed Administrator of a new regulatory agency, the U.S. Environmental Protection Agency (EPA), penned a prescient law journal essay on democracy and the environment.\(^1\) Ruckelshaus would later go on to serve as the Deputy Attorney General of the United States, winning much acclaim for his integrity during the infamous Saturday Night Massacre, when he resigned from office instead of carrying out President Richard Nixon’s order that he fire a special prosecutor looking into the Watergate cover-up.\(^2\) But more than

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\(^*\) Edward B. Shils Professor of Law and Political Science; Director, Penn Program on Regulation, University of Pennsylvania.


a year before he took that act of courage, and while he was still EPA Administrator, Ruckelshaus published a short essay that focused on the public’s crucial role in the process of developing and implementing environmental policy. He emphasized that the “credibility gaps and cynicism” that followed from tumultuous aspects of the 1960s had come to “make it essential” that environmental policy choices not only be in fact “wise and well-founded but also that the public know this to be true.” Ruckelshaus, supra note 1, at 636-637. He urged that the best way to improve public confidence in environmental regulation was “to involve the public actively in the regulatory process.” Id. By participating in this process, members of the public would develop “a feeling of involvement” and gain “valuable insight into the practicalities” and tradeoffs inherent in regulatory decisionmaking.

Despite the passage of five decades, the main themes in Ruckelshaus’s essay continue to resonate today. The federal government faces huge credibility gaps among large segments of the public. Public participation in environmental policymaking remains as vital as ever. Nevertheless, the United States is also a different country today than it was in 1972, and the most substantial environmental challenge the nation confronts today—climate change—is more daunting than ever.

To understand better the role of public participation in environmental regulation—both to highlight what has been learned over the past fifty years, as well as to assess what progress remains to be made—I have invited five colleagues to share their reflections on Ruckelshaus’s ideas in The Citizen and the Environmental Regulatory Process. The purpose of my own essay here is both to introduce Ruckelshaus’s essay as well as this collection of expert commentaries. After briefly summarizing Ruckelshaus’s argument, I assess the continuities and changes surrounding U.S. environmental policymaking in comparison with a half-century ago. I then highlight what I see as some of the present-day challenges that confront EPA and other environmental regulators when it comes to making and implementing policy and to involving the public in that process. Finally, I turn to introducing my colleagues’ essays that make up this collection and invite readers to explore their insights. Among the many environmental challenges facing the planet today is the question not merely of deciding what the United States’

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3 Ruckelshaus, supra note 1, at 636-637.
4 Id. at 637.
5 Id.
environmental policies should be, but also of deciding *how to decide* what they should be.  

1. **The Citizen and the Environmental Regulatory Process**

Although written a little over fifty years ago, Ruckelshaus’s essay raises many themes and issues that apply equally well today. His account of the EPA’s regulatory role—one that commits the agency to take steps “in the public’s name to ensure that due regard is given to the environmental consequences of actions by public and private institutions”—still applies. So too does Ruckelshaus’s rationale for public participation: “[T]he public has a vested interest in environmental matters. Decisions regarding the continued use of pesticides, for example, are not solely within the purview of scientists. They are basic societal decisions about the kind of life people want and the risks they will accept to achieve it.” They are also decisions that call for the “balancing of environmental values against other economic and social values.” Given the tradeoffs involved in making environmental policy, and given the fundamental importance of environmental protection to people’s quality of life, “all interested persons—farmers, environmentalists, manufacturers, consumers—must have an opportunity to be heard.”

To today’s ears, these words may seem almost a truism. Yet the motivations underlying Ruckelshaus’s argument may be what strikes the most resonant chord of all today. His worry about growing public cynicism applies to the nation now even more than it did in the early 1970s. So too does his call for policymakers to avoid demonizing different sides of the public debate. When Ruckelshaus cautioned against any tendency to “write off environmental groups as extreme and hysterical,” he urged regulators to avoid a posture toward any side of the debate that “leads to polarization, not progress.”

In the particularly contentious political times that the United States finds itself in at present, Ruckelshaus’s essay provides an important reminder of the need for regulators to show empathy and engagement—to seek out the

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8 Ruckelshaus, *supra* note 1, at 636.
9 Id. at 638. The view that science cannot entirely determine environmental policies, of course, has not always been vocalized by EPA leaders. See, e.g., Cary Coglianese & Gary E. Marchant, *Shifting Sands: The Limits of Science in Setting Risk Standards*, 152 U. Pa. L. Rev. 1255, 1271-1273 (2004).
10 Ruckelshaus, *supra* note 1, at 643.
11 Id. at 638.
12 See id. at 636-637 and accompanying text.
13 Id. at 644.
public’s views and truly listen to them. Ruckelshaus urged that government must show “responsiveness to the electorate’s value preferences”\textsuperscript{14} and that it must translate “public interest into effective action programs.”\textsuperscript{15}

Ruckelshaus justified public participation, in part, as a vital component of humane, democratic governance.\textsuperscript{16} Treating all interests affected by environmental regulation with dignity and respect was simply the right thing for government to do.\textsuperscript{17} But it was also more than just intrinsically valuable. Ruckelshaus saw participation as pragmatically necessary too.\textsuperscript{18} It would help promote the legitimacy of environmental policy.\textsuperscript{19}

For this reason, Ruckelshaus stressed that it was simply not enough for regulatory officials to make correct policy decisions.\textsuperscript{20} The public also needed to accept that these were the right decisions—or at least reasonable ones.\textsuperscript{21} Ruckelshaus argued that public participation can help win this broader acceptance because it helps put members of the public in the regulator’s shoes and helps them see why environmental policy choices are so challenging.\textsuperscript{22} A public hearing, for example, “not only supplies the regulator with the evidence and views of the citizen but is an excellent educational experience for the citizen himself.”\textsuperscript{23} When members of the public participate, they can come to the “realization that most solutions require pragmatic compromises or balancing of interests.”\textsuperscript{24}

In this way, public participation “usually rids the citizen of any nagging suspicion that an agency knuckled under to private interests.”\textsuperscript{25} Only by engaging openly and honestly with members of the public can a regulatory agency stand a chance of developing “complex, and often controversial, programs” within “an atmosphere of understanding, trust and cooperation.”\textsuperscript{26}

\begin{itemize}
\item \textsuperscript{14} Id. at 643.
\item \textsuperscript{15} Id.
\item \textsuperscript{16} Id. at 644.
\item \textsuperscript{18} Ruckelshaus, supra note 1, at 636-37.
\item \textsuperscript{19} Id.
\item \textsuperscript{20} Id. at 636.
\item \textsuperscript{21} Id. at 637.
\item \textsuperscript{22} Id.
\item \textsuperscript{23} Id. at 641.
\item \textsuperscript{24} Id. at 637.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id. at 641.
\end{itemize}
II. CONTINUITIES

Ruckelshaus’s pragmatic call for moderation and respect—and for the kind of genuine, empathic public engagement that promotes public trust and cooperation—remains especially resonant.27 This resonance should come as little surprise given that the era within which Ruckelshaus wrote was, like today, one of considerable social and political flux. The tumult of the late 1960s and early 1970s was on Ruckelshaus’ mind when he opened his essay by describing the United States as “a gigantic boiler” and by noting that, at least when it came to the environment, society’s “fire has been lit.”28 He emphasized that it was an “aroused public” that at that time was “demanding government action.”29

The decade preceding the publication of The Citizen and the Environmental Regulatory Process had witnessed an “aroused public” engaging in massive civil rights marches and in rallies to protest the ongoing war in Vietnam. As these protest movements propelled the nation toward social justice, they also revealed societal rifts and deep veins of public disaffection. That time period also witnessed horrific instances of political violence. Within the span of five years, a sitting president, a beloved U.S. Senator, and a civil rights hero were assassinated. These incidents prompted violent outbreaks among the public, including riots on the streets of many major cities. Separately, the Democratic Party’s political convention in Chicago in 1968 resulted in four days of violent clashes between protesters and city police. And in 1970, just two years before the publication of Ruckelshaus’s essay, National Guard soldiers killed four unarmed student protesters and injured another nine on the campus of Kent State University in Ohio.

That same year also saw a remarkable outpouring of public support for environmental protection, with a reported 20 million people turning out for rallies and protests across the nation on the first Earth Day.30 Although

28 Ruckelshaus, supra note 1, at 636.
29 Id.
30 Emily M. Martin, How the First Earth Day Ushered in a Golden Age of Activism, NAT’L GEO. (Apr. 21, 2022), https://www.nationalgeographic.com/history/article/how-the-first-earth-day-
Earth Day is often thought to have signaled the birth of the modern environmental movement, that movement did not just arise suddenly. In the two years leading up to the 1970 Earth Day, media coverage of environmental issues more than quadrupled.31 The portion of the public reporting to pollsters that they were troubled by pollution tripled between 1965 and 1970.32 In 1965, only 17 percent of the population ranked the environment as one of their top three policy concerns, but just five years later that proportion of the public would increase to 53 percent.33

This dramatic shift in public attitudes in favor of environmental protection solidified during the 1970s. Over the intervening decades, public support for the environment has remained solid across substantial portions of the public.34 It is even sometimes said that “we are all environmentalists now.”35 Indeed, only 18 percent of the public today thinks the U.S. government is doing too much to protect the environment.36

Today, the Earth Day and civil rights protests of the 1960s and 1970s see parallels in the Women’s March of 2017 and the sustained racial justice protests of 2020.37 Some of these more recent protests elicited harsh govern-
mental responses involving the use of force against unarmed citizens, reminiscent of the response to protestors outside the 1968 Democratic Convention and on the campus of Kent State.\textsuperscript{38}

The lawless mob violence perpetrated at the U.S. Capitol on January 6, 2021—and its instigation by a sitting President of the United States—may seem to have little direct precedent in U.S. history. But that incident, too, is reflective of a broader underlying tumult not entirely dissimilar to what Ruckelshaus had in mind when he wrote about an “aroused” U.S. public moving toward what he termed a “new American Revolution.”\textsuperscript{39}

III. CHANGES

Despite the similarities between the early 1970s and today, any contemporary reader of Ruckelshaus’s essay might be forgiven for seeing as almost quaint his worries about public cynicism and the risk of political polarization. After all, society has changed dramatically since 1972. Since that time, economic inequality has ballooned in the United States;\textsuperscript{40} trust in government has plummeted (especially after Watergate);\textsuperscript{41} and political polarization is now as stark as ever.\textsuperscript{42} From today’s vantage point, Ruckelshaus’s objective of finding common ground seems more compelling


\textsuperscript{39} Ruckelshaus, supra note 1, at 636.

\textsuperscript{40} THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 19 (Arthur Goldhammer trans., 2014).

\textsuperscript{41} See Public Trust in Government: 1958-2022, supra note 6 (reporting that in 1964, about 77 percent of the U.S. public trusted its government always or most of the time, while in 2019 that level was only 17 percent).

and yet also more unrealistic. Officials at the EPA and other regulatory agencies operate today in a much more contentious and fluid political climate than even the early 1970s.

In the 1970s, both political parties strongly supported proactive environmental regulation. It was a Republican president, Richard Nixon, who created the EPA. He appointed Ruckelshaus, himself a Republican, to be the agency’s first administrator. The major environmental statutes, most of which were adopted the 1970s, passed with strong bipartisan majorities. And yet today, that kind of bipartisanship has disappeared. It is virtually impossible to envision legislation on any regulatory topic as receiving anything like the kind of bipartisan support that led to the original passage of federal environmental legislation such as the Clean Air Act and the Clean Water Act.

Perhaps nowhere has the divide between Democrats and Republicans on environmental protection become so pronounced as it has over climate change issues, a fracture that began to emerge in the 1990s. Today, 90 percent of Democrats think that the federal government is doing too little to reduce the effects of climate change, while only 39 percent of Republicans think the same. Nearly half of all Democrats rate climate change as a “top” policy concern, while only 10 percent of Republicans do. Of course, these views can be differentiated further, as more moderate Republicans, as well as those who are younger and those who live in areas affected more by flooding.

44 Id.
45 Coglianese, supra note 30, at 95-98.
and wildfires, exhibit greater concern about climate change. Nevertheless, it has become clear that the bipartisan support that existed in the early 1970s has evaporated over the most pressing environmental issue of our time. Although Ruckelshaus expressed faith that EPA could increase public trust through transparency and increased public awareness of the challenges facing environmental regulators, researchers find that today “[p]artisanship is a stronger factor in people’s beliefs about climate change than is their level of knowledge and understanding about science.”

This is not to deny the importance of inclusive and meaningful public participation in environmental policymaking. Indeed, participation has probably never been more important than today, precisely because of the partisan divide on climate issues and the growing public mistrust of government. Yet it remains that the partisanship and cynicism of our current era has occurred despite EPA’s many efforts to engage with the public over the years. This fact reveals that public participation can never be considered a panacea in the face of larger forces chipping away at trust and promoting cynicism.

Even Ruckelshaus would come to realize firsthand the limits of public deliberation. After his service as the first EPA Administrator ended in 1973, Ruckelshaus returned to the helm of the agency during the Reagan Administration, in the wake of a major scandal that forced EPA Administrator Anne Burford Gorsuch to resign. On his return, Ruckelshaus sought to rebuild public trust in the agency by, among other things, holding a high-profile series of public workshops in Tacoma, Washington, aimed at informing a major regulatory decision the EPA had to make about air pollution standards for arsenic. Depending on these standards’ stringency,

49 See Ben Geman, A GOP Generation Gap on Climate Change, AXIOS (July 15, 2022), https://www.axios.com/2022/07/15/gop-climage-change-generation-gap-poll (showing polls in which younger Republicans believe the government is not adequately addressing climate change); see also Bryan Kennedy, Alec Tyson & Cary Funk, Americans Divided Over Direction of Biden’s Climate Change Policies, PEW RSC. CTR. (JULY 14, 2022), https://www.pewresearch.org/science/2022/07/14/americans-divided-over-direction-of-bidens-climate-change-policies/ (illustrating that Americans affected by severe weather are more likely to perceive climate change as a contributing factor).


51 Daniels & Follett, supra note 2, at 10243-45.

52 RONALD A. HEIFETZ, LEADERSHIP WITHOUT EASY ANSWERS 95-96 (2009).
they could potentially avoid as many as three cancer fatalities in the region each year, but at a risk to the economic viability of one of the Tacoma area’s largest employers—a copper smelter that was also a major source of tax revenues for the city. Faced with a tradeoff between protecting public health and protecting jobs, Ruckelshaus decided to reach out to members of the public. EPA organized three workshops to give them an opportunity to deliberate over what should be done. The results were not overwhelmingly positive. One account noted that the workshops “created considerable and often unfavorable press coverage.”

The process not only failed to result in any overarching consensus, it actually generated criticism of Ruckelshaus for abdicating his agency’s responsibility to make regulatory decisions. In the end, EPA was spared having to make a decision because the smelter closed down in the face of international competition before EPA even proposed a new standard. Still, Ruckelshaus himself would later express some disappointment in the public engagement exercise: “Perhaps I underestimated how difficult it would be to get people to take responsibility, to educate themselves and one another about such a difficult issue.”

Despite public participation’s very real challenges, it would not be unreasonable to surmise that had it not been for the many engagement efforts that EPA has undertaken over the last fifty years, things could have been much worse for the agency and for the environment. Had EPA not followed Ruckelshaus’s advice “to try new approaches to citizen participation” and provide the public with “the fullest possible disclosure of information,” distrust and polarization over environmental issues might easily be more pronounced than they currently are. It may be that EPA’s very success “in creating a transparent, participatory, and analytic rulemaking process” has helped maintain a good degree of general public support for environmental protection, not to mention for EPA specifically.

A variety of surveys do
show, after all, that a majority of the public views the EPA as effective and trustworthy.\textsuperscript{60} In 2019, a gap of only 6 percentage points separated Democrats’ favorability ratings of the EPA from those of Republicans—a striking convergence in a society with highly polarized political views on climate change.\textsuperscript{61}

The quest to build public confidence in environmental regulation will always remain. As the current EPA Administrator Michael Regan has put it, these challenges will be especially great “in an era where that trust feels more fractured than ever.”\textsuperscript{62} No knowledgeable environmental regulator today can have any illusions about the ease or the automatic efficacy of their efforts to engage with the public. But every regulator today also knows, as Ruckelshaus did in 1972, that it is vital for regulatory officials to seek to engage meaningfully with all segments of the public. After all, as Ruckelshaus would later ask, in the face of criticisms he received over the workshops with EPA rulemaking could have been much more contentious and unproductive in the absence of these efforts by agency leaders and staff. \textit{Id.} at 1034 (“A fifty-year equilibrium of low litigation rates and high agency win rates appears to have stemmed in good measure from the people who have provided the leadership in the agency and from their judgment to value solid, conscientious professional staff work.”).


\textsuperscript{61} \textit{Public Expresses Favorable Views of a Number of Federal Agencies}, \textit{Pew Rsch. Ctr.} 1, 5 (Oct. 1, 2019), https://www.pewresearch.org/politics/2019/10/01/public-expresses-favorable-views-of-a-number-of-federal-agencies/. Of course, partisanship probably helps explain this convergence of views. In 2019, Democrats were somewhat less favorable of EPA under President Donald Trump than in previous years, while Republicans were somewhat more favorable.

members of the public that EPA convened in Tacoma: “What’s the alternative? Don’t involve them?”

IV. CHALLENGES

EPA’s current administrator, Michael Regan, shared a pledge in 2021 with his agency’s employees that Ruckelshaus almost certainly would have endorsed:

In all its programs, EPA will provide for the fullest possible public participation in decision-making. This requires not only that EPA remain open and accessible to those representing all points of view, but also that EPA offices responsible for decisions take affirmative steps to solicit the views of those who will be affected by these decisions.

As much as Regan’s statement reads like Ruckelshaus’s essay in its commitment to full, meaningful public engagement, and in seeking to “earn the public’s confidence,” EPA today faces several challenges that Ruckelshaus could not have anticipated or simply failed to address in his 1972 essay.

One of these—racial equity—was never mentioned by Ruckelshaus despite the national spotlight on civil rights in the 1960s and 1970s. This conspicuous absence of race from Ruckelshaus’ account of public participation and environmental rulemaking no doubt emanated from—even though it was hardly justified by—the racial and class biases reflected in the origins of the U.S. environmental movement. After all, Ruckelshaus’s essay is primarily a pragmatic response to the pressures placed on government by environmental activists: “Society owes a debt to those who sounded the

63 Reich, supra note 53, at 1634.
64 Regan, supra note 62.
65 Id.
environmental call to action,” he noted. And those activists at the time were disproportionately white and middle or upper class. When Ruckelshaus admonished his readers to avoid characterizing environmentalists as “bird-and-bunny people,” this choice of language probably evoked for its readers an image of the privileged members of many of the major national environmental organizations.

It would take at least a decade or more before environmental justice concerns started to win even a modest level of institutional attention within the U.S. environmental movement. These concerns still need attention today—and at much more than modest levels. If society is ever to achieve a more equitable distribution of environmental quality based on race and class, then members of all communities need to be part of the process of making and implementing environmental regulations. This is why Administrator Regan’s 2021 pledge of fairness in participation and policymaking at the EPA is so vital. He has urged EPA staff “to increase coordination, communication, and engagement with community-based organizations, civil rights organizations, and other communities or groups that have been historically underserved by, under-represented in, or subjected to discrimination by the federal government.”

Unlike with racial justice, additional challenges confronting today’s regulators are ones that Ruckelshaus could not have been anticipated in 1972. These are challenges that stem from advances in digital technology: the internet and social media.

Much of what Ruckelshaus had in mind by way of participation involved the input of representatives from environmental organizations. Even if those organizations have long been out-numbered and out-resourced by industry, they still have been able to play the kind of role in rulemaking that

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67 Ruckelshaus, supra note 1, at 644.
68 Id.
69 This longstanding orientation has not, of course, stemmed from a lack of interest in environmental protection from persons of color. See Dorceta Taylor, Can the Environmental Movement Attract and Maintain the Support of Minorities?, in RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE (Bunyan Bryant & Paul Mohai eds., 1992). Indeed, as has long been noted, environmental harms in the United States are too often disproportionately borne by members of low-income communities and communities of color. See generally ROBERT D. BULLARD, ED., UNEQUAL PROTECTION: ENVIRONMENTAL JUSTICE AND COMMUNITIES OF COLOR (1994); DAVID M. KONISKY, ED., FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT’S RESPONSE TO ENVIRONMENTAL JUSTICE (2015).
70 Coglianese, supra note 30, at 106.
71 Regan, supra note 62.
Ruckelshaus envisioned, namely of representing the broader views of citizens concerned about the environment. But today, participation can take place in ways that simply were not possible when Ruckelshaus was setting up the EPA.\textsuperscript{73} Individuals need not rely on representatives of interest groups to ensure their views are reflected in rulemaking. They can submit their own comments via email; they can join directly in virtual listening sessions and online hearings; and they can make themselves vocal through social media.\textsuperscript{74} Thanks to robust disclosure policies, individuals can now also access vast volumes of information on agency websites about environmental rulemakings—all from a laptop and the comfort of a couch.\textsuperscript{75}

Despite the positive possibilities created by online participation, environmental regulators face three challenges from digital technologies. The first challenge is simply to capture the attention of the public. Although members of the public have much more information about environmental rulemaking available to them than ever before, they also have access to so much more information about \textit{anything} that interests them. The same web-based technology that can give them access to agency studies, risk analyses, and economic assessments can also enable them to engage on social media with friends and family, watch cat videos, and pay attention to any number of issues other than environmental regulation that they find more interesting.\textsuperscript{76} One can hardly blame members of the public. With so many other demands on their time, and after having entrusted public officials with protecting them, it is not unreasonable for individuals to gravitate toward much more interesting ways of spending their spare time than learning about and participating in regulatory decision-making.

\begin{footnotes}
\textsuperscript{76} Tim Wu, The Attention Merchants: The Epic Scramble to Get Inside Our Heads (2016). The availability of other alternatives on digital platforms helps explain why most rules still garner few if any comments from members of the general public. Cary Coglianese, Weak Democracy, Strong Information: The Role of Information Technology in the Rulemaking Process, in From Electronic Government to Information Government: Governing in the 21st Century, at 28 (Viktor Mayer-Schoenberger and David Lazer, eds., 2007) (“Rather than inspiring members of the public to participate in the arcane or technical discussions surrounding regulatory policymaking, modern information technology is and will continue to be more widely used by citizens for other purposes, such as communicating with friends and family or accessing entertainment.”).
\end{footnotes}
A second challenge centers on what regulators ought to make of the occasional large outpouring of public comments that they do receive when the rare rulemaking goes viral. This challenge is referred to in the field of administrative law as the problem of so-called mass comments—or, pejoratively, spam comments. Although most rules still only garner no more than a dozen or so comments, mass comment campaigns do sometimes occur. The outpouring of comments in these campaigns typically comprise either large volumes of repetitive form letters or the most cursory expressions of support or opposition to a proposed rule. When agencies receive a gargantuan amount of these short or identical comments, they must not only manage to process and sort them, but they must also substantively decide what to make of them. Almost everyone agrees that environmental rulemaking is not a plebiscite, but agencies still need to find ways to treat repetitive and even cursory contributions respectfully and meaningfully.

A final challenge confronting environmental regulators—and all government officials—stems from misinformation. This problem can manifest itself in fraudulent or robo-generated comments. It can also manifest itself in public misinformation campaigns targeting specific agency policies. EPA faced such a campaign in 2014 following its issuance of a proposed rule to define the conditions under which businesses needed to obtain permits under the Clean Water Act. The farm lobby launched a public relations and social media campaign known as “Ditch the Rule” that attacked the proposed rule and claimed that it would sweep even small ditches into the EPA’s regulatory jurisdiction. EPA responded with a public relations and social media campaign of its own, which it labeled “Ditch the Myth.” A subsequent review by the U.S. Government Accountability Office, however,

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determined that certain aspects of the agency’s campaign violated federal laws prohibiting agencies from engaging in propaganda.82

In the years ahead, environmental regulators will need to develop lawful but effective strategies for counteracting misinformation campaigns, fraudulent comments, and even deepfake videos. The challenge of building public trust in government policy will require more than just providing opportunities for public input into environmental decision-making, as Ruckelshaus emphasized. Those opportunities will be necessary, but not sufficient. In the future, environmental regulators will need to undertake active efforts to ensure accuracy in the information that members of the public have available to them when they participate in rulemaking. And given persistent inequalities in society, they will also need to engage in active efforts to ensure that all members of the public have this needed information and are able to have their voices heard.

V. COMMENTARIES

The insights contained in the collection of essays that follow in this issue of the University of Pennsylvania Journal of Law and Public Affairs offer ingredients for a vision of a participatory future. Rather than just looking back on the last fifty years of public participation to identify continuities and changes, the authors of these essays cast their sights on what the processes of environmental policymaking need today and in the decades to come.

The collection opens with an essay by Monika U. Ehrman that endorses Ruckelshaus’s call to involve citizens in solving environmental problems but also emphasizes how this involvement imposes responsibilities on members of the public themselves.83 One of these responsibilities is to become informed about environmental problems and take the time to contribute to thoughtful deliberation about policy solutions. More deeply, Ehrman suggests that citizens also have a responsibility to look into the mirror and recognize that we all are part of the problem. As long as citizens, when acting as consumers, continue to prioritize low costs over sustainability in their own purchasing decisions, and as long as members of the public continue to favor the freedom to drive their own cars rather than demand better mass transit options, environmental problems will remain.

These environmental problems are today both qualitatively different and more difficult to solve than they were in 1972, argues Dan Walters. He also recognizes that public participation is no foolproof path either to solving them nor to building public confidence in needed environmental regulations. Still, Walters puts forward a forceful argument that regulators must seek to foster public debate and deliberation over environmental problems. Even if public engagement will not always work, Walters agrees with Ruckelshaus that its “real significance” lies in “in the fact that the debate itself occurred.” In other words, we should not abandon public deliberation just because it fails to lead to a consensus; instead, we should recognize, Walters argues, that the existence of even heated and irresolvable deliberation can have “some degree of intrinsic value.”

Shelley Welton argues that climate change has made electricity the most important focus of environmental rulemaking today. Yet for many years, the Federal Energy Regulatory Commission (FERC) had neglected its responsibilities for engaging broadly with the public. Instead, FERC, along with its state-level public utility commission counterparts, largely engaged with industry. But a newly created Office of Public Participation at FERC is trying to make up for lost ground—and Welton suggests that the FERC staff have much they can learn from EPA’s experiences with public participation. For this reason, Ruckelshaus’s essay may be even more relevant to FERC today than to EPA. As FERC expands its participatory efforts, Welton urges the Commission to do more than just go through the motions. It must sincerely seek to learn from public input and incorporate it into its decision-making. The ultimate test, she says, will be “whether agency approaches and substantive outcomes change as a result of broadened participation.”

In another essay in this collection, political scientist Sara Rinfret surveys the landscape of public participation opportunities available to environmental regulators today. She shows that these options include more than just the traditional notice-and-comment process that existed in 1972 but also now includes a variety of online apps that can facilitate public learning and engagement. She argues that the availability of rulemaking information on the internet, combined with opportunities for the public to submit

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85 Ruckelshaus, *supra* note 1, at 644.
86 Walters, *supra* note 84, at 29.
88 Id. at 36.
comments electronically and engage in online forums, has definitely “increased the level of accessibility” of rulemaking. ⁹⁰ But she also points to the challenges of the future, noting that “[a]gencies and their rule-writers will also need to continue using technology to ensure a broader swath of the American people can participate in regulatory processes.” ⁹¹

Wendy Wagner concludes this collection by coming back to a fundamental reality: even with new digital technology, public engagement over rulemaking still remains a human process, and humans simply have limited time and capacity to learn about and participate in environmental rulemaking. ⁹² Due to what Wagner considers almost an iron law of the “economics of participation,” members of the general public—as opposed to well-funded industry groups—will find it costly to take time to contribute thoughtfully in the rulemaking process. She shows how Ruckelshaus’s 1972 essay failed to take the economics of participation into full account. But rather than dwelling on shortcomings of the past, she looks to the future and proposes legislative action to support subsidies to underrepresented groups. She says that agencies should consider appointing proxies or other designated representatives when needed to ensure a broader set of perspectives in environmental rulemaking. She also proposes that courts should give greater deference to rulemaking decisions that are made following agency efforts to secure a full, robust engagement with the public. Only by taking steps such as these, Wagner argues, can environmental rulemaking become more balanced and less dominated by industry.

**CONCLUSION**

In his 1972 essay, Ruckelshaus wove together two of the most fundamental issues facing society: the health of the planet, and the health of democracy. His central message at that time—when the modern environmental movement had just begun—still rings true today. The public deserves to be placed at the heart of environmental policy decisions, with as many different voices as possible deserving to be heard. After all, environmental policy is ultimately by, for, and about people, which means that people need to be at the center of all deliberations about how regulations are designed and enforced.

Regulators have often defined their core mission solely in terms of the substantive outcomes they are charged with achieving, such as attaining

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⁹⁰ *Id.* at 40.
⁹¹ *Id.* at 41.
reductions in air pollution or protecting the safety of drinking water. This is an absolutely vital framing. Yet it is also not regulators only responsibility. At the same time as they keep focused on the substantive goal of delivering needed environmental protection, regulators also have the simultaneous mission of doing so with integrity and with empathic engagement with the public.93 This is the real wisdom underlying Ruckelshaus’s *The Citizen and the Environmental Regulatory Process*. Revisiting his essay after the passage of more than fifty years serves as an important reminder for regulators to pursue their important substantive responsibilities while also listening openly and actively before making the decisions that affect the public.

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93 See COGLIANESE, supra note 17.