1973 was at the crest of the environmental surge that swept the United States half a century ago. In the previous three years, Congress had passed NEPA, the Clean Air Act, and the Clean Water Act. The first EPA Administrator took office in 1971. Continuing the legislative wave, 1973 saw the passage of the Endangered Species Act (ESA. And the year also saw some major judicial decisions.

Like today, 1973 was a time of political turmoil. The bitterly divisive Vietnam War was winding to an end, and much of the news that year was dominated by the Watergate scandal that ultimately brought down President Nixon. One subject stood outside the political turmoil: environmental law. In an EPA survey, 85% of the public thought pollution was a big problem.

The passage of the ESA highlights the extent of the national consensus over the environment. It's a controversial law today, but it passed the Senate unanimously and the House by a 355-4 margin. In signing the bill into law, President Nixon said: "Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed. It is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans." He congratulated Congress for "taking this important step toward protecting a heritage which we hold in trust to countless future generations of our fellow citizens. "

Two judicial decisions that year also stand out as noteworthy. In *United States v. Students Challenging Regulatory Agency Procedures (SCRAP I)*, the Supreme Court took a very generous view of standing. The plaintiffs were challenging a routine rate increase for railroad transportation of scrap metals. They alleged that the 2.5% rate increase would decrease recycling, which in turn would result in more litter in the parks that they used.

The opinion was written by Justice Potter Stewart, a moderate Republican. The Court found it irrelevant that nearly everyone in the country would be impacted by the rate increase: "To deny standing to persons who are in fact, injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody. We cannot accept that conclusion." Moreover, even though causation was indirect and the effect likely to be very small, the plaintiffs had still managed to allege "a specific and perceptible harm," which was sufficient to keep their lawsuit alive. Today's environmental lawyers can only dream of receiving such a sympathetic reception to their claims of standing.

In another notable case, the D.C. Circuit rebuffed EPA's effort to delay a compliance deadline in the Clean Air Act on the ground that compliance would not be feasible (as it

probably was not). The case is one of dozens titled *Natural Resource Defense Council v. EPA*. Ruling just nine days after oral argument, the court insisted on strict compliance with the deadlines except where the statute itself provided an escape hatch.

The court found that "the Administrator [of EPA] acted in the best of faith in attempting to comply with the difficult responsibilities imposed on him by Congress." But he did not "conform to the strict requirements of the Clean Air Act of 1970 in permitting several states to delay." The "combined effect of these unlawful actions," the court said, "has been to interfere with the congressional purpose of attaining clean air by a date certain, May 31, 1975, subject only to certain limited and well-defined statutory extensions." This judicial willingness to enforce environmental law as written is far less in evidence today, as shown by the recent ruling in *West Virginia v. EPA*.

What are the lessons to be drawn from this transformation from the environmental "golden age" to the much messier present? One is that political polarization has claimed many victims, even on what used to be issues that unified all Americans. That polarization was accelerated as an unintended side-effect of another 1973 Supreme Court decision, *Roe v. Wade.*

Even apart from polarization, it soon became clear after the early 1970s that environmental transformation would be more difficult, slower, and more expensive than Congress had assumed. As the challenges became more apparent, it also became clearer who the economic losers would be.

In a less polarized world, we would be having a much more rational and nuanced discussion of environmental policy today. But we would still be faced with the serious disputes about the role of government and with resistance from those would bear the heaviest costs from environmental change. As with youth generally, environmental law can look back fondly at the innocence of its youth, but there is no escape from the need to confront the far messier realities of the present.