

# Pathways to Policy Durability

Insights for Advocates and their Funders

*prepared for*

The Walton Family Foundation



# I. Introduction

For over a century, American policymakers have worked to implement policies that conserve natural resources and protect the environment, from Theodore Roosevelt's efforts to establish national parks and the measures enacted in the wake of the Dust Bowl all the way to the efforts of the late twentieth and early twenty-first centuries. But simply passing an environmental policy is not the end goal of these efforts—the end goal is protecting natural resources and the planet in the long run. In order to do that, multiple conditions need to be satisfied. A policy must pass, it must be signed, it must be enacted, and it must *last*.

In 2021, the Walton Family Foundation (Walton) engaged with TCC Group (TCC) to conduct a study on the concept of policy durability—or how policies last and effect change for long periods of time. Policy durability is generally assumed to be a desirable end state for advocates working to pass a particular policy. This report examines overall policy durability, often through the lens of environmental policy. The goal of this engagement was exploratory in nature, with the intent to gather information and insights on the conditions that make policies durable. In synthesizing what we found, our goal is to help funders and advocates be more effective in pursuing policies that will be durable in addition to being effective.

The findings in this report were derived from a literature review of existing work around policy durability, 21 expert interviews, and 3 case studies. Additional detail on the methodology can be found in Appendix I.



***“It is not enough to begin; continuance is necessary. Mere enrollment will not make one a scholar; the pupil must continue in the school through the long course, until he masters every branch.”***

– James Russell Miller

## II. Prologue: The Key Durability Questions

### Why Study Policy Durability?

Hundreds of policy advocacy organizations operate in America on behalf of workers, immigrants, families, and the environment, to name a small subset. When the goal of their work is to implement or bolster certain public policies, they may celebrate their successes with each beneficent policy that is passed or signed into law. For example, in 2021 the Sierra Club celebrated President Biden’s executive actions to bolster the Endangered Species Act.<sup>1</sup> However, once signed into law, policies may be watered down, made irrelevant, or simply repealed. Therefore, creating a tally of policy wins in the moment is an important but insufficient gauge of effective policy advocacy. Instead, a policy should be measured by its ability to create positive change, which often is only seen over the long term.

The following report aims to explore policy durability in the context of **today’s political climate**. Most experts describe the current political climate as hyper-polarized. Previous studies of durability were conducted in different times and with different political norms. Because this paper uses empirical sources from conditions that have historically led to policy durability, we must consistently keep in mind that we are applying those lessons to a different time period. Findings from previous times can provide useful insights but may lack some predictive power when applied to today’s context.

*“Relentless focus is really important if you’re going to see all the claims made about how great the effects of a policy will be. You have to stick with it every year and month. It never stops.”*

–Policy Consultant

<sup>1</sup><https://www.sierraclub.org/press-releases/2021/06/sierra-club-celebrates-biden-administration-move-reinstate-protections>

## What is Policy Durability?

At the time this study was conducted in 2021-2022, there had not yet been many deep dives in the study of policy durability. Experts that we interviewed often concluded our calls with a comment such as, “Durability is a great research topic. From my vantage point in the nonprofit world, I’ve found it’s not a question that often gets asked.” Since thought leadership on policy durability is scant, it is often difficult to even find a consensus opinion on its definition. Through an extensive literature review and expert interviews, we propose that durability consists of these characteristics:

- **Longevity of the concept.** We have begun with a basic definition of durability—public policy, or a “set of political commitments for addressing a given set of problems,”<sup>2</sup> that has the benefit of sticking around over long periods of time. As defined by Peter J. May in the article “Policy Regime Perspectives: Policies and Governing,” policy durability is more than the longevity of the text of a single policy—it is about the longevity of the concept itself, thus allowing for flexibility in implementation over time as long as the policy or set of policies is aimed at addressing a set of problems.
- **Outlasting political upheavals.** In the article “Durable Policy, Political Accountability, and Active Waste,” the authors Steven Callander and Davin Raiha wrote that “first, and most obviously,” to be durable, policy must last “longer than a single electoral cycle.” In essence, policy is not durable if the next presidential administration or legislative majority overturns it or waters it down at its next opportunity. Expert interviewees for this study felt similarly. In 10 of the 20 interviews, experts mentioned the characteristic of outlasting political upheavals when asked to define policy durability.

## dur·a·ble po·l·icy

A codified directive  
or commitment  
aimed at addressing  
specific problems  
that lasts sufficiently  
long to demonstrate  
its effectiveness and  
maximize its value.

<sup>2</sup> Peter J. May in the article “Policy Regime Perspectives: Policies and Governing.”

- **Robustness and flexibility in the face of other external shocks.** In addition to outlasting political upheavals, durable policy must last through other external shocks, including economic recessions, disasters, or other challenges. This quality often manifests in the form of flexibility. The economy, the external conditions, or even the text of the policy itself may change, but as long as the function of a policy remains the same, it can still be considered robust.<sup>3</sup> Interviewees for this study also described the flexibility of policy as a key characteristic. One individual said policies need to “avoid the kind of general neglect of policies that don’t get updated and stop serving their purpose.”

## Is Policy Durability a Good Thing?

At first glance, it seems a given that policy durability would be considered a positive characteristic, particularly in the realm of environmental policy. If you are a policy advocate, you want to see your hard work come to fruition, stick around, and improve lives into the future. If you are a constituent, you want to see the policy benefit your environment, livelihood, and health. But for nearly every policy advocated, there is some type of policy precedent that it is looking to overturn, clarify, or supersede. The fact that advocates are deliberately trying to shift policy is one indicator that policy durability is not, *de facto*, a good thing.

Therefore, we want to be explicit that policy durability must be paired with other elements in order for it to be a desirable pursuit: effectiveness, justice, and flexibility.

“Commodity subsidies dwarf conservation programs by many billions of dollars, and there is a strong argument that commodity subsidies lead to negative environmental externalities. So, competing policies become the driver with both feet on both pedals, and you are treading water as a result.”

–Political Consultant

<sup>3</sup> In the Article “Resilience and robustness in policy design: a critical appraisal,” authors Capano and Woo defined the concept of policy robustness or “the capacity to maintain the functions of a system (policy, political system, organization, or institution).”



Based on findings from the literature review and the themes in expert interviews, the working definition arrived at for the purposes of this paper will be:

## Effectiveness

The policy must demonstrate positive impact. In the article “The Durability of Carbon Cap-and-Trade Policy,” Barry G. Rabe describes three characteristics for durability,<sup>4</sup> one of which was, “the capacity to produce demonstrable outcomes or benefits that can build and sustain constituency support, especially in the face of future political challenges.” Essentially, for durable policy to be a good thing, it should demonstrate to constituents that it will actually deliver the goods, with the goods being positive outcomes for people or their communities. Beyond that, any negative externalities of the policy should be highly counterbalanced by the positives. As one of the expert interviewees said, the change should not “eat away at itself by creating backlash” because of negative consequences.

## Justice

For durable policy to be a good thing, it must be just. That is, it should treat constituents equitably as it solves a problem in an equitable way. One expert interviewee expressed frustration about the many ways conversations about conservation leave out the topic of equity. Issues of water and air quality affect all constituents in a given area, from the most powerful lobbyist to individuals that do not get involved in politics in any way. Therefore, policies should include a discussion of getting people the resources they need. Additionally, policy discussions of farming and land ownership are bound to touch on topics of equity.

## Flexibility

In their 2013 article “The Struggle to Remake Politics,” authors Patashnik and Zelizer made the point that policies with high durability might not adjust to the changing preferences of citizens, making durability a normatively bad thing. One interviewee described a current housing crisis and placed the blame for the crisis on too-durable policies, saying,

*“The reason we are in a housing crisis is because of policies established decades ago and not changed, or the change was too hard... There’s a huge fight regarding upzoning [where many] white and wealthy people used that lack of upzoning to exclude communities of color from their neighborhoods, and as a result we built tens of thousands fewer units than we should have, so that policy was too durable. [We should balance] keeping policies in place so they accomplish goals but also recognize that some policies shouldn’t be durable because their pretenses are no longer valid.”*

- Policy Expert

<sup>4</sup> The first characteristic was the aforementioned ability to outlast political upheavals, and the second will be mentioned later in this report.

**Durability** 

## Effectiveness

The policy should demonstrably lead to positive environmental impacts that outweigh negative externalities.

## Justice

The policy must be applied to and affect constituents in an equitable way.

## Flexibility

The policy must change when external conditions change so it continues to be applicable.

 **Lasting,  
Beneficial  
Policy**

### III. Findings from the Research

Policy durability considerations show up at every stage of the policy life cycle. These considerations include policy design, advocacy pre- and post policy adoption, and ongoing context considerations. We have organized the report findings to follow these areas. Each of the following sections includes a description of the finding, supporting evidence, and some implications for enhancing policy durability in the future. The sections are:

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#### Policy Content & Design

The text, design, and mechanisms that comprise policy.

#### Pre- Passage Advocacy

The work that goes into policy advocacy prior to its passage.

#### Post- Passage Advocacy

The work that goes into policy advocacy after its passage.

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## Policy Content & Design

The text of any given policy can lead to durability or alternatively a lack thereof. Therefore, one of the key places to begin an exploration of policy durability is in the content of the policy—that is, in the design, wording, goals, and instruments<sup>5</sup> embedded in a given policy. The following characteristics of good policy content have been shown as more likely to lead to policy durability.

**“In everything the ends well-defined are the secret of durable success.”**

– Victor Cousin



### Threats to Durability in this Phase

- Poison pills and compromises in policy design that will erode the ability to achieve impact or public confidence in the potential of the policy
- Language and processes that subject the policy to unnecessary or burdensome court challenges
- Rigid policy design that will break, rather than bend, when implemented
- Insufficient resources and enforcement mechanisms embedded

## Simplicity of Policy Design

In the context of durability, it is beneficial for the text and specifics of a given policy to be low on jargon and written in a no-nonsense way. This policy design style leads to durability via a few different mechanisms:

- **More easily communicated to constituents.** Once passed into law, easily worded content will help stakeholders in their efforts to communicate the policy to the greater public and make the case as to why it should stick around.
- **More easily communicated to and by policymakers.** Ease of communication to policymakers may make it easier to bring them on board in support of a policy. In turn, those policymakers will have an easier time communicating policy specifics in any public-facing comments.

*“The more clear things are, the better. Extraneous, confusing language makes things harder. I have seen poorly-crafted model legislation cause a lot of consternation and [subsequently] not be effective at all.”*

–Policy Analyst

<sup>5</sup> In “The Quest for Durability” (2020), the author Jordan cited three key policy components laid out by Hall: policy goals, policy instruments, and the calibration of those instruments. It may be useful to consider those components when reviewing key factors in a policy’s durability.

- **More easily communicated to implementers.** The uncomplicated wording of a policy will also likely help bring policy implementers from agencies on board, easing implementation, smoothing the rules process, and potentially reducing grounds for legal review.
- **Allows for flexibility in changing conditions.** One interviewee made the case for straightforward policy language, musing that durability and precision of policy might be inversely related. They said, “The more exacting the regulation is, the more difficult it is to get passed and the more likely it is to get overturned or shifted.” With regard to the durability of the Clean Water Act, it was durable because “It meant what we needed it to mean during different windows of time... some strategic ambiguity can be useful sometimes.”

## Flexibility of Policy Design

Policy must be able to change with the times, as there may be changes in the external conditions, scales, or venues in which it is implemented.

- **Flexibility in different scales and venues.** Flexibility that aids in implementation in different venues and conditions is especially crucial to its durability. Interviewees extolled the virtues of flexibility to allow for local scale experimentation and autonomy. One described the benefit of scalability in design, saying, “Most states are poor, and a few are not... If you can define something that [a poor state] adopts, you have probably identified something that is the cheapest alternative possible for a problem.”
- **Flexibility for governmental agencies and implementers.** Policy designers should allow for those carrying out the policy to leverage their own expert knowledge and experience in making implementation decisions. In the article “The Durability of Carbon Cap-and-Trade Policy,” Barry G. Rabe describes three characteristics for durability.<sup>6</sup> One characteristic Rabe listed was providing “governing agencies sufficient flexibility to take advantage of policy learning through mid-course adjustments once

## Case Study

The Minnesota Riparian Buffer Bill Implementation guidelines changed from a 50-foot guideline to something more commonsense when it was determined that a full 50 feet was not necessary. This flexibility increased the palatability of the policy with ordinary landowners.

<sup>6</sup> The first characteristic was the aforementioned ability to outlast political upheavals.

performance indicators emerge and trouble spots become evident.” Interviewees agreed with the concept that flexibility for implementers is key. As one individual stated, there is a need for “some structure that keeps the policy moving forward... adjusting the rules written [for] the policy. Otherwise, it is a bill that got passed with no one stewarding it.”

- **Flexibility over time.** A policy designed and initially passed decades ago will undoubtedly have at least some components that become less relevant or useful over time. Therefore, a policy written with room to adapt to changing conditions will likely have increased durability.

## Credibility of the Enforcement Mechanism

In addition to no-nonsense wording in the mechanics of implementation, there should also be a credible, understandable way to draw a line from the design of the policy to an outcome that will support the public good. Policy designers should consider elements of technology and technical capacity when laying out enforcement mechanisms. One interviewee described how a law might dictate an enforcement mechanism that does not currently exist or is prohibitively expensive. As a consequence, a nonprofit agency would be left in a lurch, trying to develop implementation technology that is actually usable.

## Allowing for Entrenchment Over Time

In general, a policy will be more durable if it becomes entrenched into practices over time. Carlson-Rainer wrote an article<sup>7</sup> about how policy mandates that enjoy widespread popular support once they are incorporated in a government agency’s policymaking are difficult to remove. As such, the content of policy text should include levers to allow for that entrenchment. An example of this type of entrenchment is timelines that are built into the content of a bill. When asked which specific policy mechanisms support a policy being more durable, one of the expert interviewees described timelines and pre-scheduled check-backs with the legislature on a given policy. Other mechanisms include building incentives where the greater implementation metrics are for an agency, the more resources it will receive.

Another way to bolster entrenchment over time is by providing for a consistent budget. Without a budget for any given policy, it cannot credibly be enforced. One way to do this is to build in recurring funding into the text of the policy. Having the budget baked in will also more

<sup>7</sup> Carlson-Rainer “Will Sexual Minority Rights Be Trumped? Assessing the Policy Sustainability of LGBTI Rights Diplomacy in American Foreign Policy.”

efficiently leverage advocates' work. One interviewee described this budget entrenchment as “the dream for policy advocates—having the budget baked in to be funded every time rather than tussling every few years.” Another interviewee described an Indiana soil erosion bill that set a 15-year goal in 1985 to reduce erosion by 2000. Because the goal was so far in the future, the policy allowed for the bill to be well-funded until that period. Our case study on the Farm Bill found the beneficial nature of having a five-year cycle of automatic funding.

## Front-Load Community Benefits

Multiple writings in the literature review described the importance of maximizing benefits and minimizing drawbacks for constituents, particularly at the outset of a policy's implementation. In an academic article, Jacob S. Hacker argued that it would be best for policy advocates to “start as big as possible. For proposals like Medicare expansion where size really matters—small program, small effects—you want to achieve the maximum feasible dimensions as quickly as possible.”<sup>8</sup> Another author wrote, “Designing climate policy to deliver broad, near-term benefits could help overcome some of the political opposition. To do so might require linking climate change with other issues, or linking various interest groups.”<sup>9</sup> Therefore, those writing policy should include mechanisms to front-load community benefits at the outset of a policy, recognizing this may not always be feasible.

## Design Policy in Anticipation of Court Challenges

Court challenges to policy chronologically occur post-passage and implementation, but they can be attenuated in the initial stages when the policy is being written. Policy should be written in a way that anticipates court challenges and does all it can to mitigate them from the outset. Those writing durable policy should be knowledgeable of the limitations of executive policymaking that have been previously set by courts in order to cut off litigation challenges at the pass.<sup>10</sup> It will also be wise for policy advocates to anticipate well in advance how some of these legal challenges may be addressed. The Clean Water Act serves as a key case study in what happens when the language of a policy does not anticipate these types of challenges.



<sup>8</sup> Hacker, J. S. (2019). Medicare Expansion as a Path as well as a Destination: Achieving Universal Insurance through a New Politics of Medicare

<sup>9</sup> Aldy, J.E. (2016) Mobilizing political action on behalf of future generations.

<sup>10</sup> Bulman-Pozen, J. (2019). Administrative states: Beyond presidential administration. Texas Law Review, 98(2), 265-325

## Pre-Passage Advocacy

In order for a policy to be durable, it first must be designed, passed, and implemented into law. At each of these points, it needs input from a coalition of supporters and advocates. The following are the activities that lead to a strong team of supporters that sustain a policy into long-term durability.

***“A lot of hard work is hidden behind nice things.”***

– Ralph Lauren



### Threats to Durability in this Phase

- Key constituents and the general public not understanding the principles that undergird the policy
- Feeling among implementers and constituents that the policy will be overly burdensome or have unfair ramifications
- Executive action that doesn't have a robust rules process embedded for changes
- Shifts in the conversation from policy to an overly political or polarized view of the issue
- Too-narrow constituency and set of champions for the policy

## Conducting Strategic Messaging Emphasizing Benefits

Both at the outset of policy advocacy and when conducting advocacy post-passage, the framing and messaging of the policy is related to its durability. The more policymakers and the public<sup>11</sup> understand the benefits and/or principles of a policy (especially those that align with their own), the more likely they are to indicate support for the policy or reduce their objections, both of which are factors in the political will needed to sustain the policy.

*“Create a federal energy standard, but don't call it that. Frame it as a new economy built around electric vehicles and transitioning to free, clean energy for households. Offer a big pot of stimulus money only available to those demonstrating American entrepreneurial spirit and innovation.”*

– Environmental Expert in Academia

<sup>11</sup> For the purposes of this research paper, we use the term “general public” to mean the broadest constituency of the entity making the policy, with a special emphasis on those most likely affected by the policy.

Key strategies for effective policy messaging include reducing language that may be thought of as polarizing, focusing on principles and values, and emphasizing the benefits to constituents' communities. Additional detail on these three areas include:

- **Avoiding polarizing concepts.** Recognizing that what might be polarizing for one group may be energizing for another, data suggests it is beneficial to work to avoid concepts that are considered divisive in order to support policy durability. For example, in terms of the environment, expert interviewees for this research project were on the same page and recommended avoiding the term environmental legislation entirely. Instead, they recommended framing the policy as one focused on economic development or public health.
- **Focusing on principles and values.** When forming opinions about policy, the general public and policymakers will often focus more on broad overarching principles related to the policy than the actual content of the policy. Effective communication will win the battle of value framing. This concept is explored further in the subsequent section on identifying high-level principles.
- **Emphasizing benefits.** A paper produced by the William and Flora Hewlett Foundation<sup>12</sup> indicated that “conservation outcomes or policies that endure are those that deliver positive impacts for the range of communities impacted by the outcome.” Continuous messaging about the value of a program post-implementation is key. The case study of the Farm Bill found that “keeping up support for conservation programs is a full-time job for conservation groups – pushing out stories about how this bill works and the benefits.”

## Mobilizing Multiple Stakeholder Groups

Durable policy can be bolstered and sustained by a strong coalition working in support of the policy. According to public policy scholar Eric Patashnik, one important predictor for whether a policy will remain durable is “the degree to which the policy creates a political constituency for its continuation.”<sup>13</sup>

## Nurturing Business Interests

**Strategies:** Leverage economic incentives by ensuring sunk costs or making it less valuable to object to a given policy or providing subsidies.

**Challenges:** Too many incentives towards industry groups can lead to environmental groups disapproving of a policy.

<sup>12</sup> “Building Conditions for Enduring Conservation Outcomes.” <https://hewlett.org/wp-content/uploads/2022/02/Hewlett-Enduring-Conservation-Outcomes-2022.pdf>

<sup>13</sup> Carlson, A. E., & Fri, R. W. (2013). Designing a Durable energy policy. *Daedalus*, 142(1), 119-128. doi:10.1162/DAED\_a\_00189



When mobilizing on policy advocacy, it is important to incorporate cross-sector groups.<sup>14</sup> In terms of the “how” of engaging groups, we know from other research that avoiding tokenism is a good strategy for engaging broader groups.<sup>15</sup>

Additionally, advocates should be willing to explore working with non-traditional allies. History has shown examples of groups benefiting from policy that they might not have naturally expected to benefit them. For example, environmentalists have often worked with hunters and fishers to advance responsible stewardship of public lands. The Farm Bill case study indicated that in the 1980s, there was broad agreement among agricultural interests that erosion needed to be combatted. One interviewee said, “Even the farmers had the attitude that if you weren’t protecting the soil, you weren’t a good farmer.” When the benefit to certain groups might be more abstract, experts suggested building in incentives into the policy that makes some benefits more tangible.

An additional key consideration in mobilizing diverse stakeholders is the image that allied groups convey to the general public. For that reason, it is wise to keep polarizing groups in favor of your policy in the background during the policymaking process. Six expert interviewees described the importance of keeping potentially controversial advocacy work under the radar in order to maintain public support. One said that nowadays policy should be considered “more durable if it is almost behind the scenes, because of polarization.”

*“[Aim for] incremental, meaningful policy. You can’t go for big stuff—instead, set the direction of positive change. Too many people want sweeping changes, and those big changes are as durable as the political party in charge. The smaller ones are more durable because they work better and go under the radar.”*

*- Environmental Expert in Academia*



<sup>14</sup> In an article by Capano and Woo, the authors described this bolstering, writing that a polycentric decisional structure will do this. They write, “This structure allows for multiple actors in the design process and implementation, which gives policymaking political legitimacy and relevant expertise.” This trend has also been catalogued in local policy work. In the article, “Innovation and the Role of Collaborative Planning in Local Clean Energy Policy,” the authors argued that “extensive use of stakeholder involvement and collaborative planning is the very thing that evens the playing field” in terms of implementing conservation or clean energy policies at the local level.

<sup>15</sup> Locke, Kate, J. Raynor, D. Sood, and I. Ezeofor (2021). “Coalitions as a Tool for Advocacy: Evidence and Lessons Learned.” TCC Group briefing paper.

## Identifying High-Level Principles for Policy

Durable advocacy coalitions often unite under the banner of high-level principles. They can serve as an umbrella that everyone within the coalition can support. They can also direct a cohesive policy, serving as a compass to guide decisions through challenges that arise throughout the life of the policy. One interviewee described the importance of “at the outset, having a broad, deep, shared goal and communicating about that consistently, [then] implementing it widely and in ways that build political capital for it.”

Framing high-level goals and principles expands the breadth of stakeholder appeal. It also makes it easier to communicate complex policy to the broader public. The following are some examples of unifying principles:<sup>16</sup>

“We got 30 people in a room from all different sectors and levels of government and identified the key principles and buckets of action. It has been shocking for me that we have been very gradually implementing those and they have been very durable.”

- Environmental Expert in Academia

**Table 1: Examples of High-Level Principles**

| Principles  | Core ideals encompassed                    | Easily communicated | Seen to benefit the general public |
|---|--|---------------------|------------------------------------|
| We should all have access to clean water.                         | Equity, Environmentalism, Health, Fairness | ✓                   | ✓                                  |
| Everyone should be able to pay a fair price for the same service. | Equity, Fairness, Markets                  | ✓                   | ✓                                  |
| People shouldn't make money off of pollution.                     | Environmentalism, Fairness, Public Good    | ✓                   | ✓                                  |

<sup>16</sup> In the article “Policy Regime Perspectives,” the author May writes about the importance of “shared commitments and understandings” in weaving broader, bigger picture ideals with which to frame policies to the public.

## Incorporating Rural America into Principles

One component of message framing and discussing public benefits is the incorporation of rural America into the high-level advocacy principles.<sup>17</sup> Expert interviewees described the importance of bringing in interests related to rural America into the policy. One example of this is grounding conservation policy in values related to hunting, the outdoors, and Christian stewardship. Another is by extolling the benefits that rural farmers can reap when the environment is cared for. Another is simple acknowledgment of the huge role rural America plays in our overall land stewardship. To craft such policy, one interviewee recommended engaging in listening tours and using the results of those tours to design policy that benefits rural America.



## Bringing on Bipartisan and Non-Partisan Supporters

The bipartisan nature of a policy or the degree to which it is agreeable to many sides plays an important role in attracting initial supporters. When asked about their strategy for implementing policy that actually lasts, expert interviewees indicated the policy needed to be bipartisan. They felt bipartisanship is an indicator that a policy is non-controversial.

Support from those without any formal political partisanship can also be helpful. For example, a credible public university had a strong leadership role in an Indiana-based environmental study. They were regarded as the most prominent and respectable source of agriculture information in the state, which gave the study “instant credibility.” In turn, that credibility helped to bring on the support of landowners and then legislators to the public policy advocacy that followed.

## Bringing on and Nurturing an Array of Effective Champions

Having an effective set of legislative champions is often critical for getting policies passed. In the case of the Minnesota Riparian Buffer Law, Minnesota Governor Mark Dayton was a vocal champion, pushing the bill from conception to passage. Though the importance of getting

<sup>17</sup> In the case of federal policy, this equates to benefiting large swaths of the country. In the case of state policy, this equates to benefiting large areas of the state, be they urban or rural.

and nurturing champions seems obvious, it is also bound to be challenging in today's highly polarized political environment where there can be disincentives for working across the aisle.

On top of having a set of powerful champions, it is also important to nurture new champions. If a bill is seen as having only one or two main champions, it is important that those champions work to bring others into the mix. Otherwise, once the small number of champions retire, it is possible no one else will want to absorb an issue seen as already owned by another legislator.

One important aspect of durability related to champions is how they are engaged by advocates. Developing and nurturing a set of effective champions is only one important piece of the policy puzzle. The other piece is in the strategic leveraging of those champions. Policy advocates should strategically call upon champions at strategic opportunities. They cannot be seen as crying wolf too frequently. Otherwise, when they need champions' support, it might not materialize, or the champion may have spent their political capital.

## Implementing Via Legislative Over Executive Action

In 2014, President Barack Obama declared, "We're not just going to be waiting for legislation in order to make sure that we're providing Americans the kind of help they need. I've got a pen, and I've got a phone."

Executive orders and regulatory changes can be a swift and powerful tool to advance policy without the delays associated with a legislature but are generally acknowledged to be less durable. Implementing policy this way is a major risk factor that could decrease its permanence. If a president uses their executive authority to implement a splashy or controversial policy, the subsequent administration may just as swiftly repeal or overturn it. This turnover occurred with Obama's 2015 Clean Power Plan in 2017 when President Trump overturned it and replaced it with a policy that weakened fuel standards. Due to a noticeable trend of this turnover across administrations, expert interviewees leaned somewhat towards recommending policies be passed in a legislative chamber over executive actions.

Unfortunately, we were not able to gather useful insights related to enhancing the durability of executive action specifically, but many of the durability principles described throughout this paper can be applied to executive action.



## Post-Passage Advocacy

The durability of a policy depends as much on what happens post implementation as it does on what goes into it from the beginning. The following section lays out key activities to engage in to bolster long-lasting policy.

**“Success seems to be largely a matter of hanging on after others have let go.”**

William Feather



### Threats to Durability in this Phase

- Backlash efforts to repeal or water down the policy
- Losing champion support, by losing priority status among champions or losing the number of champions in legislature
- Decreased interest or motivation from advocates or other stakeholder groups to support the policy or issue
- A change of another related policy that makes your policy less tenable
- Lack of tangible or clear benefits of the policy that can be effectively communicated
- Shifts in the economic environment that unexpectedly alter cost considerations of the policy or specific groups the policy affects
- Future politicization of issues

## Nurturing Implementer Buy-In

After the legislative phase of policy comes the regulatory phase, where handbooks and guidance documents are created. In this phase, those at regulatory agencies have, in the words of one interviewee, “a ton of discretion” in how laws are implemented. One researcher found that a significant component of policymaking comes from agency action rather than legislation.<sup>19</sup> Interviewed experts agreed. One advocate said, “Laws can be turned on their head” in this portion of the process. “It’s hard to change the status quo worldview, and if the people who are implementing the program don’t have that transformational change perspective in their mind it’s difficult to make the progress we need to make.”

**“Get something that fits with the agency culture—repurpose an existing tool they use or an existing regulation in place.”**

- Environmental Expert in Academia

<sup>19</sup> Bulman-Pozen, J. (2019). Administrative states: Beyond presidential administration. *Texas Law Review*, 98(2), 265-325.

Combined with their power to implement laws, this characteristic makes it doubly important to focus considerable advocacy resources during the regulatory process.

One strategy for conservation groups to build this buy-in is fostering relationships with senior, career agency officials. For example, nurturing relationships with senior officials at the EPA can be beneficial. Career officials, rather than appointees, are often less influenced by political winds.

## Supporting Implementers in Implementation

People generally want to do good work but often find themselves restricted by their resources and environment. To this end, one aspect of policy durability is to help ensure effective implementation of policy. In addition to bolstering buy-in with implementers, advocates can also bolster the capacity to do implementation. The following types of support can aid implementers:

- **Doing implementation.** Sometimes advocates (or their organizations/partners) are also best positioned to successfully implement some of the policy actions. By taking a proactive role in implementation, advocates can better ensure that the policy shows benefit, thereby translating into durability.
- **Maintaining the lines of communication between advocates.** This activity will help ensure each advocacy group owns the policy goal(s) and continues working to achieve stated benchmarks. This also includes celebrating wins with diverse constituencies and acknowledging the important collective success.
- **Providing guidance and technical assistance.** This assistance can bolster advocates' ability to establish benchmarks and monitor results and can provide public servants much-needed support.<sup>20</sup>

### Case Study

#### Minnesota Riparian buffer bill

Minnesota farmers were asked to create riparian buffers, and they needed to follow through with that work. In that case, there was a high percentage compliance, and therefore the policy had a good chance of leading to environmental effect.

<sup>20</sup> In our case study of the Farm Bill, we found that policies had been effective at reducing soil erosion by a great deal. But now that there is no sustained effort to bolster compliance, "we are losing topsoil left and right."



## Building Confidence in the Policy

Expert interviewees were divided on the importance of nurturing public support as a long-term advocacy strategy. When asked about the importance of public opinion in policy durability, three expert interviewees indicated it did not play a particularly prominent role. One said, “Advocates think of [these niche issues] as super-important, but the average person doesn’t.” They noted the difference in intensity of the messages of opponents versus policy proponents, saying, “Opponents are a vocal intense minority and [proponents]... are less intense, and then their support dries up once something is passed.”

Where interviewees did all agree is that support for policy will be predicated in large part on its perceived value. According to many interviewees, this includes nurturing positive public sentiment and stakeholder understanding of the value of the policy. Specifically, the public should be able to feel the positive effects of a policy or perceive that a problem has been solved. There is a clear cause-and-effect path with regard to strong public opinion and vocal policymaker support. That is, policymakers wish to be re-elected, and thus they wish to stay in the good graces of the public. Therefore, they have an incentive to respond to strong public opinion.

Strategies for building confidence in the policy include:

- **Leveraging precipitating events.** Current events can be used to reinforce the value of the policy. If positive things happen in the jurisdiction where a policy is implemented, advocates have an opportunity to remind stakeholders about the real or expected role of the policy in those outcomes. If negative things happen in other jurisdictions that the policy aims to address, they can be used to reinforce why the policy was implemented in a given jurisdiction.

*“The ‘new politics’ that make some policies durable flow from the new coalitions of political support – comprising interest groups, businesses, policy makers and voters – that inevitably spring up around them after the adoption process is complete.”*

– *The Quest for Durability*, by  
Andrew J. Jordan and  
Brendan Moore



- **Demonstrating how a policy positively affects constituents' lives.** Advocates should communicate tangible ways a policy has improved the lives of everyday constituents. It will be useful if the policy has front-loaded benefits at the outset of implementation, as described earlier.<sup>21</sup>
- **Fostering grassroots support.**<sup>22</sup> Advocates should mobilize constituents via outreach email lists and action alerts to pressure policymakers to vote in favor of legislation or to not strip power or funding from legislation.
- **Watchdogging.** By serving in a watchdog function, advocates can give confidence that someone is watching over the issue. This improves confidence in the perceived value of the policy and doubly serves to hold implementers accountable to fidelity and intent.

“One conservative representative has sponsored multiple conservation bills “in part because of [advocates’] relationship with his staffers but also [because of the hard work of advocates. Despite his political placement,] he supports everything we want for conservation, and you can go to him on just about everything.”

-Policy Consultant

## Proactively Managing Policy Backlash

A key aspect of long-term durability is a policy’s resilience in the face of backlash occurring post-passage. Opponents of a given policy may have been present from before the policy design stage, or alternatively they may have increased in number and strength over time. However they have emerged, most policies face other parties who are opposed to their enactment. In some cases, a policy may become so entrenched over time that advocates become complacent, accepting the policy as a given way of life and being taken by surprise when it is eroded or overturned.

<sup>21</sup> In “Designing a Durable Energy Policy,” Carlson wrote, “One measure of durability is whether a program not only remains on the books but continues to have real effect long after its passage. By this definition, much of the CAA is durable.”

<sup>22</sup> A paper produced by the William and Flora Hewlett Foundation indicated that grassroots support is essential in leading to enduring conservation benefits.

Advocates have a few strategies they may employ to proactively manage policy backlash:

- **Remain vigilant of other organizations.** Keep up to date on the strategies, priorities, and tactics of other organizations with opposing goals. It is useful for advocates to track the work and the messaging put forth by opposing groups on these matters in order to anticipate if they are working to lobby legislators to weaken or repeal policy.
- **Pay attention to local-level challenges.** Advocates should remain coordinated with local groups to anticipate local legislative changes that might eventually threaten federal or state policies.
- **Continue ongoing cultivation of nontraditional stakeholder groups.** These nontraditional groups remain important, even after policy passage. Throughout implementation, work to show reciprocity and lift up these stakeholder groups. Conduct proactive communications so they remain aware of the benefits of the policy they helped support.

*“I don’t think I can imagine a single durable policy that we don’t fight over constantly. [Any] significant social policy is [always] under constant attack.”*

*-Policy Advocate*



## Anticipating and Addressing Challenges in Court

In addition to legislative challenges, policies may be challenged judicially. Before attempting an all-out repeal, groups opposed to policy may begin by floating trial balloons to see how courts will rule on components of a policy or to gauge just how far they should go in their attempts to undo a policy.

Though they represent a challenge to overcome, legal proceedings are likely inevitable. In some cases, they may even be desirable. They have the benefit of testing some of the premises of policy and may serve to improve policy in terms of effectiveness or equity. In addition, litigation can be an opportunity for funders and advocates to further advance the goals of the policy. For example, some jurisdictions allow the filing of amicus briefs, which advocates can solicit from diverse stakeholder groups. In other situations, communication around legal challenges can serve as an opportunity to reinforce important policy principles and values. Finally, the discovery process and litigation research can help uncover valuable stories that demonstrate the effectiveness of the policy.

### Case Study: The Clean Water Act

The language of the policy was written to keep “Waters of the United States” intentionally vague and thus allow the EPA to define it. That ambiguity led to lawsuits and back-and-forth legal wrangling between the United States Supreme Court and Presidents Obama and Trump. As recently as April 6, 2022, the Supreme Court reinstated a Trump-era regulation restricting states’ role in the enforcement of the Act



## IV. Advocacy and Support Recommendation

**“Successful organizing is based on the recognition that people get organized because they, too, have a vision.”**

– Paul Wellstone

The preceding catalog of policy durability considerations and conditions naturally invites the question: **What should I do if I want to support durable policy creation?** As with most decisions made in complex environments like policy change, the answer is not found in a clear, linear checklist. There are many contextual factors at play when making these allocation decisions. The following recommendations may serve as a starting point in considering policy advocacy and policy advocacy support decisions:

- **Clarify how your organization can and will engage in the policy advocacy. Pose a series of questions such as:**

- Are you in it for the short term or the long term?
- Do you give general support or only project support?
- How quickly and nimbly are you able to get money out the door?
- Can you support lobbying (including policy writing)?
- Would you support legal advocacy?

The answers to these questions all play into deciding what the most effective way is to support policy durability. Research suggests a few components that are nearly always givens. First, policy durability is a long-term venture and there is a role at every stage, individually and collectively. Second, advocates are savvy—ask them what they think is needed at a particular point in time to help make the policy durable. Third, capacity infrastructure and general operating support are critical to ongoing effectiveness. Allowing lapses that subsequently need to be built back (often through sporadic funding) can be more costly than maintaining infrastructure over the long term.

- **Advocacy stage transitions are precarious moments for policy durability.** Funding support that spans the stages described above (pre-advocacy to advocacy or advocacy to implementation) is where advocacy gaps frequently occur and can lead to awkward

transitions. This challenge occurs because the groups taking the lead or ownership and the skillsets need to shift during these transition points. Prepositioning support for these transitions can be an effective way to support policy durability. This includes translation of research and pilot projects into broader public policy concepts; shifting from light mobilization to active mobilization during policy windows; moving from policy advocacy to policy implementation; and following policy implementation with policy monitoring and sustaining.

- **“Maximizing public value” is both an objective and subjective pursuit.** Policy durability, by definition (see above), requires the policy to last long enough to maximize public good. Determining when the policy has achieved that value is both a science and an art. The science comes from establishing clear objective criteria. That criteria may be the specific ends you wish to achieve with this policy and the specific measures to know it was achieved. This requires thoughtful conversations about intent across the policy lifecycle amongst policymakers, advocates, and constituents. The art comes from managing the policy narrative and asking the following questions in an ongoing way:
  - **Is this policy still working how it was intended? Why or why not?**
  - **Have we achieved what we thought was important?**
  - **What might sustaining this policy for another few years lead to?**
- **Benchmark goals over the course of a policy timeline.** There is no question that it can be harder to sustain support for policies where the benefits take longer to materialize or are harder to externalize (e.g., climate change, vaccine introduction, etc.). Policy durability research suggests that devising ways to frontload some benefits is important. One way to do that is to establish implementation benchmarks as well as change proxies (short-term changes that may be harder to see but could be quantified or told as narrative stories). These measures can be celebrated and can provide opportunities to reinforce the story that the policy is traveling a path towards great value.
- **Consider what has been done and what is left to do.** While it may sound like the obvious thing to do, systematically considering the context into which you are entering is foundational. The context will drive what is likely to be most and least beneficial. While there are no sure bets in these prioritization exercises, our research on policy durability suggests a few critical places to start related to supporting durable policy, included in Table 2.



**Table 2: Priority Areas for Funder Support of Durable Policy**

| Areas of Support Focus                    | Timepoint                               | Ways to Support   |
|---|---|---|
| Organization around high-level principles | Prior to initial advocacy               | Give varied groups support to organize around something they can all agree to and can support across specific policy opportunities, with an emphasis on getting to core principles and values. This support may include convenings, listening tours, facilitating connections, message testing research, etc.   |
| Assessing and communicating value         | Initial stages of pre-passage advocacy  | Support data and storytelling efforts that clearly demonstrate the value of the policy through the lens of specific principles and values (e.g., economic development, individual liberty, etc.). This might also include supporting demonstration projects. Groups should also have resources for a deliberate communications plan.  |
| Prepare to “win the win”                  | Later stages of pre-passage advocacy    | There are at least three key areas to support to prepare for a shift from advocacy to implementation. First, technical policy knowledge (of both the specific policy and more general policy implementation) will be needed to support those tasked with operationalizing the policy. Second, ongoing narrative and communication strategy is necessary to prepare for potential backlash. Third, it is important to position research and evaluation to systematically capture policy value and effectiveness. |
| Friendly regulatory framework             | Initial stages of post-passage advocacy | Support technical experts (subject matter experts and human behavior experts) to inform the rules and regulations process and grassroots groups to support them with public comments.   |
| Successful implementation                 | Later stages of post-passage advocacy   | Support implementers with policy implementation. This may include supporting technical assistance for those that will implement the policy, softening the path for those who will have the most difficulty with policy implementation, and helping early adopters get results as quickly as possible.   |

- **Review the factors in policy durability and keep them in mind.** Simply keeping policy durability findings in mind may reveal opportunities that had not previously been considered in each unique setting. Table 3 identifies key questions to spur discussions and learning among funders and advocates about how to increase the odds of a policy's durability.

**Table 3: Questions Funders and Advocates Should Ask About Policy Durability**

|  |  |
|--|--|
| <b>Questions of Policy Design</b>                | <ul style="list-style-type: none"> <li>• Will there be enough funder support for pre-passage work?</li> <li>• Do we know enough about the implementers' agency culture, rules, and preferences to craft policy?</li> <li>• Which branch and level of government is appropriate for a given policy?</li> <li>• Is policy designed in a way to be effective, just, and flexible?</li> </ul>  |
| <b>Questions of Champions &amp; Policymakers</b> | <ul style="list-style-type: none"> <li>• Have the right champions been developed to ensure it is passed and implemented?</li> <li>• What do advocates need to communicate to policymakers in order to get their support?</li> <li>• Which policymakers are the most strategic "gets"?</li> <li>• Which policymakers are persuadable to join the cause?</li> <li>• Are champions diversified enough?</li> <li>• How does the policy fit into the rest of the legislative agenda?</li> </ul> |
| <b>Questions of Implementation</b>               | <ul style="list-style-type: none"> <li>• Have accountability and outcome benchmarks been laid out? Have deadlines been laid out?</li> <li>• Will there be enough funder support for post-passage work?</li> <li>• Has the policy been embedded within existing agency culture?</li> <li>• Have agencies been given the tools needed to implement?</li> <li>• Is agency/implementer buy-in sufficient? Are the lines of communication open?</li> </ul>                                      |
| <b>Questions of Advocacy Coalitions</b>          | <ul style="list-style-type: none"> <li>• Are all advocates in strategic alignment?</li> <li>• Do advocates have all the resources they need?</li> <li>• Are advocates prepared for the implementation step of the process? (with planning, resources, and skills)</li> <li>• What components are best to comprise a coalition?</li> <li>• Is it even the right course to pursue policy remedies?</li> </ul>  |
| <b>Questions of Political Will</b>               | <ul style="list-style-type: none"> <li>• How important is political will?</li> <li>• With what strategies can advocates build and foster it?</li> <li>• What's the primary source of and reasons for public opposition?</li> </ul>   |
| <b>Questions of Impact</b>                       | <ul style="list-style-type: none"> <li>• How does this issue impact people's lives?</li> <li>• How can advocates tell that impact story?</li> </ul>  |

## V. The Future of Policy Durability Research

***“You may encounter many defeats, but you must not be defeated. In fact, it may be necessary to encounter the defeats, so you can know who you are, what you can rise from, how you can still come out of it.”*** - Maya Angelou

If advocates are looking for lasting, long-term benefits from their hard work, there are threats and opportunities at every stage of the policy process. During the initial policy development phase, advocates’ considerations include policy wording, roll-out design, and enforcement mechanisms. During the policy debate phase, take into account the policy’s framing, principles that undergird the technical aspects, and the type of stakeholder support the policy receives. Finally, in the post-passage phase, policy durability take into account managing backlash, nurturing supporters, and demonstrating effectiveness.



### Future Questions to Drive Durability Research

- **How do executive agency rules support/detract from policy durability?**
- **What is the role and effectiveness of policy adaptation (as distinct from new policy)?**
- **How does policy design need to shift in order to meet new and emergent complexities of the 21st century?**

This report and the research behind it are not exhaustive. Though the research has answered many key questions about policy durability, it has raised many more. Future questions to drive research might center on some of the biggest question marks from this research project: implementation ins and outs, policy flexibility, and navigating the increasingly complex 21st century political sphere.

Asking the question of what makes a policy durable inevitably led to an even more critical question: Is policy durability even a good thing? By first focusing on this question, we were able to lay out preconditions for lasting, beneficial policy: effectiveness, justice, and flexibility to meet emerging challenges. If these conditions are present in a given policy, then advocates can and should move forward leveraging the advocacy strategies and considerations laid out in this report.

# Methodology Appendix

In order to take into account both formal scientific research as well as experiential knowledge from the field, TCC Group (TCC) conducted a multi-pronged approach to gather information on policy durability. TCC gathered information from academic articles as well as interviews in the methodology described below:

## Literature Review

TCC conducted a literature review to survey the existing work that has been done to study policy durability. In the initial search process, TCC pulled and reviewed 68 article abstracts, and from those, selected 38 for a deeper dive on the topic of policy durability.

## Expert Interviews

To gather information on policy durability from those with expert knowledge from working in the field, TCC conducted 20 expert interviews with 21 individuals. Interviews focused on topics of specific policies that were both durable and not durable and factors that led to their durability or lack thereof. Interviewees had a range of backgrounds.<sup>23</sup>

## Case Studies

TCC worked with The Walton Family Foundation to select three policies on which to conduct deep dives to better understand their durability over time or lack thereof. The policies that were selected were:

1. The Clean Water Act
2. The conservation titles in the Farm Bill
3. The Minnesota Riparian Buffer Law

Key sources of information for these case studies were 3–5 select interviewees per case study and desk research on the policy specifics and timelines.

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<sup>23</sup> Five interviewees were primarily in the academic sphere, five were advocates, three had been involved in policymaking, four were funders, and four were primarily in another line of work, including strategists.

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## About TCC Group

TCC Group collaborates with leaders to solve complex social problems. As a certified B Corporation and with nearly 40 years of experience as a mission-driven firm, TCC Group partners with foundations, nonprofits, and companies to propel positive social change through strategy, capacity building, initiative design, strategic communication, management, and evaluation. We design and implement solutions for social impact by immersing ourselves in interconnected communities and systems, co-creating innovative and effective processes, and applying and sharing our experience with the field.

## About the Authors

**Jared Raynor, Director of Evaluation and Learning** Jared has worked extensively on evaluating policy and advocacy work, including working with The California Endowment to evaluate their general operating support grants to advocacy organizations, evaluating The Atlantic Philanthropies' post-9/11 funding to civil liberties organizations and the Rockefeller Foundation's efforts to inform national transportation policy. In addition to his expertise in policy and advocacy evaluation, Jared specializes in evaluation and organizational development of innovative and complex efforts and has worked with hundreds of diverse organizations throughout the world. He is sought after for his expertise in a variety of areas, including capacity-building initiatives, convening effectiveness, prizes and competitions, policy and advocacy evaluation, and networks and coalitions.

**Rose Konecky, Consultant** Rose has worked on many policy-oriented projects, including conducting research for, and supporting the work of an environmental policy advocacy campaign for the National Wildlife Federation. She has also conducted research and created tools for the analysis of civil rights advocacy conducted by the Mexican American Legal Defense and Educational Fund (MALDEF). Additionally, she has spent years on evaluation

and monitoring projects for funders administering large portfolios of grantees involved in policy-oriented political action. Rose combines her deep understanding of data management and analysis with her passion for spurring learning and conversation to help a range of organizations to produce tools and findings to help nonprofits, foundations, and companies tell their social impact story.

**Deepti Sood, Consultant** Deepti utilizes data in a clear, intentional way that leads to engaged learning for her clients. Highly responsive to changing environments with unwavering focus on key goals, she is an effective communicator, willing to raise up difficult issues and address them head on. With a background in advocacy and working with grassroots organizations, Deepti is inspired by opportunities to proactively partner with communities to impact change. She understands the practical needs various stakeholders require and tailors the evaluation work accordingly. She has partnered with numerous TCC Group clients, including Women Donors Network, One Justice, the Democracy Alliance, and the Center for Reproductive Rights.





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