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## Politics and the Criminal Enforcement of The Toxic Substances Control Act

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# Politics and the Criminal Enforcement of The Toxic Substances Control Act

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## Abstract

*Environmental crimes related to chemical substances are governed under the Toxic Substances Control Act (TSCA). When these violations involve significant harm or culpable conduct they may be remedied through criminal prosecution. While Democratic and Republican presidents have offered historically varied support for criminal enforcement, we know very little about how politics affects TSCA enforcement outcomes or TSCA criminal enforcement generally. To address these issues, we performed a content analysis of 2,728 criminal prosecutions from 1983-2021 that derive from the United States Environmental Protection Agency (EPA) criminal investigations and select all TSCA prosecutions. Results show 75 prosecutions were adjudicated, involving 137 defendants who were assessed 161 years in prison, 277 years of probation and directed to pay over \$170 million in monetary penalties. Prosecutions and penalties trend upward for Republican presidents, but the stronger trend is one of structural disinvestment in criminal enforcement over decades spanning both political parties.*

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## INTRODUCTION

The Toxic Substances Control Act (TSCA) was passed by the United States (U.S.) Congress in 1976 to create comprehensive federal legislation to regulate chemical substances in the U.S. and empowers the U.S. Environmental Protection Agency (EPA) to regulate these substances.<sup>1</sup> The TSCA originally centered on the risk of exposure caused by toxic chemicals.<sup>2</sup> The Act was amended in 2016 with the passage of the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act. The amendment requires the EPA to develop better protocols and testing standards for risk-based assessments for new chemical substances coming to market, targets the top ten substances that were known at the time to pose the greatest public health risks, and subjects those substances to comprehensive risk assessments.<sup>3</sup>

An enforcement system is required to ensure the proper implementation of the TSCA.<sup>4</sup> While violations of environmental law are generally remedied through civil or administrative tools that bring violators back into compliance with the law, cases involving significant

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<sup>1</sup> Toxic Substances Control Act, 15 U.S.C. § 2601.

TSCA defines “chemical substance” as, “organic or inorganic substance of a particular molecular identity, including any combination of these substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any element or uncombined radical.” These include organics, inorganics, polymers, and chemical substances of unknown or variable composition, complex reaction products, and biological materials (UVCBs). Pesticides, food additives, drugs, cosmetics, tobacco and tobacco products, nuclear materials, and munitions are not covered by TSCA. See:

ENV’T PROT. AGENCY, *About the TSCA Chemical Substance Inventory*, ENV’T PROT. AGENCY (June 29, 2022), <https://www.epa.gov/tsca-inventory/about-tsca-chemical-substance-inventory#chemicalsubstancedefined> [<https://perma.cc/MC6P-N7AC>].

<sup>2</sup> John S. Applegate, *Synthesizing TSCA and REACH: Practical Principles for Chemical Regulation Reform*, 35 *ECOLOGY L.Q.* 723 (2008).

TSCA is often criticized as one, if not the least effective of the major federal environmental laws, for not being more comprehensive and effective as a tool for regulating chemicals. See:

Colin P. Eichenberger, *Improving the Toxic Substances Control Act: A Precautionary Approach to Toxic Chemical Regulation*, 72 *A.F. L. REV.* 125 (2015).

<sup>3</sup> Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, Pub. L. No. 114-182, 130 Stat. 448 (2016) (current version at 15 U.S.C. § 2601);

Richard A. Denison, *A Primer on the new Toxic Substances Control Act (TSCA) and what led to it*, ENV’T DEF. FUND (Apr. 24, 2017), <https://www.edf.org/sites/default/files/denison-primer-on-lautenberg-act.pdf> [<https://perma.cc/X9W6-RYYK>].

Prior to the passage of this Act, TSCA was severely flawed in its original form, as it provided no strict mandate for EPA to assess the health risks of any particular chemical substances, nor did it require manufactures of chemical substances to provide information on health and environmental impacts without EPA passing such a rule. Alternatively the European Union counterpart to TSCA, known as REACH, mandates that manufacturers provide this information. See Mitchell L. Guc, *TSCA and the Lautenberg Act: Bloated Regulation, or Effective Legislation?*, 49 *TOLEDO LAW REVIEW*, 465 (2018).

REACH, the European Union counterpart to TSCA, requires manufacturers to provide information on environmental and health effects. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-07-825, *CHEMICAL REGULATION: COMPARISON OF U.S. AND RECENTLY ENACTED EUROPEAN UNION APPROACHES TO PROTECT AGAINST THE RISKS OF TOXIC CHEMICALS* (2007).

<sup>4</sup> Compliance monitoring for TSCA focuses on new and existing chemicals, Polychlorinated Biphenyls (PCBs), asbestos hazards in schools, lead-based paint, and formaldehyde standards for wood composite products. See *Toxic Substances Control Act (TSCA) Compliance Monitoring*, ENV’T PROT. AGENCY (Oct. 3, 2022), <https://www.epa.gov/compliance/toxic-substances-control-act-tsca-compliance-monitoring> [<https://perma.cc/KW6X-XTTG>].

harm or culpable conduct<sup>5</sup> often merit criminal enforcement measures to deter and punish environmental offenders.<sup>6</sup> Although there has been research into the criminal prosecution of environmental crimes, very few empirical studies examine TSCA criminal enforcement.<sup>7</sup> Because an effective TSCA regulatory regime requires strong criminal enforcement, further studies of this phenomena are needed. Relatedly, the political environment under which TSCA prosecutions have taken place and the role of politics in influencing prosecution outcomes has also escaped systematic analysis.<sup>8</sup> Although criminal enforcement of the TSCA became institutionalized through bipartisan efforts beginning in the Reagan administration through the Clinton era, since the mid-1990s, environmental enforcement has become increasingly polarized and politicized.<sup>9</sup> Democratic presidents are traditionally perceived as more supportive of stronger environmental enforcement mechanisms/policies than Republicans, and so it is reasonable to expect more prosecutions and stiffer enforcement patterns under Democratic presidents than Republican

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<sup>5</sup> *Basic Information on Enforcement*, ENV'T PROT. AGENCY (Feb. 22, 2022), <https://www.epa.gov/enforcement/basic-information-enforcement> [https://perma.cc/9PPT-78AK]. U.S. EPA, 2022, Criminal Enforcement Overview, Available from:

<https://www.epa.gov/enforcement/criminal-enforcement-overview>.

Evan J. Ringquist & Craig E. Emmert, *Judicial Policymaking in Published and Unpublished Decisions: The Case of Environmental Civil Litigation*, 52 POL. RSCH. Q. 7, 12-13 (1999).

<sup>6</sup> Memorandum from Earl E. Devaney, Dir., Off. Crim. Enf't, to All EPA Employees Working in or in Support of the Criminal Enforcement Program (Jan. 12, 1994)

<https://www.epa.gov/sites/production/files/documents/exercise.pdf> [https://perma.cc/HSJ4-RUSX].

Criminal provisions of TSCA focus on willful violations of the Act that place another person in immediate danger of death or serious bodily injury, failure to comply with PBB regulations, failure or refusal to submit to pre-manufacture notice requirements, knowing or willful reporting violations, knowing or willful denial of entry. See *Criminal Provisions of the Toxic Substances Control Act*, ENV'T PROT. AGENCY (July 1, 2022), <https://www.epa.gov/enforcement/criminal-provisions-toxic-substances-control-act-tsca> [https://perma.cc/E297-P29J].

<sup>7</sup> See Joshua Ozymy & Melissa L. Jarrell, *The Toxic Crusaders: Exploring the History of the Criminal Enforcement of the Toxic Substances Control Act*, 42 MITCHELL HAMLINE L.J. PUB. POL'Y. & PRACT. 182 (2021).

<sup>8</sup> Joshua Ozymy, Bryan Menard & Melissa L. Jarrell, *Persistence or Partisanship: Exploring the Relationship Between Presidential Administrations and Criminal Enforcement by the U.S. Environmental Protection Agency, 1983-2019*, 81 PUB. ADMIN. REV. 49 (2020).

<sup>9</sup> This came as part of a broader movement to stiffen penalties for all manner of federal crimes. As statutes were amended with criminal provisions, enforcement agents became more adept at criminal investigations, criminal enforcement no longer enjoyed the same consensus that allowed greater punishments for street crime to persist. The need to standardize punishments from the U.S.

Sentencing Commission also benefitted criminal enforcement. While the Reagan Administration was itself hostile to institutionalizing enforcement, there was enough political support to do so and it survived getting off to a rocky start. See Judson W. Starr, *Turbulent Times at Justice and EPA: The Origins of Environmental Criminal Prosecutions and the Work that Remains*, 59 GEO. WASH. L. REV. 900, 900-02 (1991); Theodora Galacatos, Note, *The United States Department of Justice Environmental Crimes Section: A Case Study of Inter- and Intra-branch Conflict over Congressional Oversight and the Exercise of Prosecutorial Discretion*, 64 FORDHAM L. REV. 587, 590 (1995); Raymond W. Mushal, *Up from the Sewers: A Perspective on the Evolution of The Federal Environmental Crimes Program*, UTAH L. REV., 1103, 1103-05 (2009); Important environmental laws have been passed under Republican presidents, such as George H.W. Bush, or Richard Nixon, even if, particularly in the case of the latter, they were not always strong advocates of federal intervention in the economy and society on behalf of environmental protection, see *All Things Considered: Republican Presidents on Environment* (NPR broadcast June 3, 2007), <https://www.npr.org/templates/story/story.php?storyId=10687339> [https://perma.cc/J9DY-W5QF].

presidents.<sup>10</sup> Yet, as any consensus on environmental enforcement waned decades ago, resources have often been scarce under both political parties, begging the question of whether TSCA criminal enforcement outcomes may be explained by the party running the White House or a broader, long-term trend in disinvestment.<sup>11</sup>

We address these shortcomings in the literature through content analysis of 2,728 criminal investigations undertaken by the EPA between 1983–2021, and select all prosecutions under TSCA. We then analyze these prosecutions across different presidential regimes to explore how longer-term trends in prosecutions and sentencing outcomes are influenced by politics. We begin with an overview of TSCA criminal enforcement, a discussion of the broader influence of politics on enforcement, provide our data and analytical method, results, and then state our conclusions, focusing on the role of politics and resources affecting TSCA enforcement over time.

### I. TSCA CRIMINAL ENFORCEMENT

The first federal laws enacted for the punishment of environmental crimes were the Lacey Act, initially enacted in 1900, and the Rivers and Harbors Act, enacted in 1899.<sup>15</sup> While a variety of federal environmental laws have been passed since these first Acts, it was the 1970s that represented a watershed moment in the development of environmental law. For example, the passage or amendment of major laws such as the Clean Water Act (CWA), Clean Air Act (CAA), Resource

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<sup>10</sup> Jessica Hejny, *The Trump Administration and Environmental Policy: Regan Redux?* 8 J. ENV'T STUD. & SCI. 197 (2018), for a solid discussion of the evolution of environmental criminal enforcement, particularly as it pertains to the EPA as an organization, and the role of politics, structural investment, and organizational culture for shaping enforcement outcomes see the work of Joel Mintz, particularly, see JOEL A. MINTZ, ENFORCEMENT AT THE EPA: HIGH STAKES AND HARD CHOICES (2012) (ebook).

<sup>11</sup> Joel A. Mintz, “Neither the Best of Times Nor the Worst of Times”: *EPA Enforcement During the Clinton Administration*, 35 ENV'T L. REP. 10390 (2005), as the mandates of EPA and DOJ have grown over time, resources have often been nominally stagnant and declining if adjusted for inflation. For ENRD and EPA. See Click on links for “Budget and Performance Summary” for budgets per year or click on “Archive” for previous years; *Budget and Performance*, U.S. DEP'T. OF JUST. (July 1, 2022), <https://www.justice.gov/doj/budget-and-performance> [<https://perma.cc/D7TN-KWJK>] (includes reports and budget information from FY2014-FY2023), numbers for annual budget in nominal dollars and staffing are found in the second and third column after Fiscal Year. Budget numbers are nominal, but if adjusted for inflation using the Consumer Price Index, annual budget allotments have been in decline for a long time for most years; *EPA's Budget and Spending*, ENV'T PROT. AGENCY (May 16, 2022), <https://www.epa.gov/planandbudget/budget> [<https://perma.cc/Q988-4M5A>].

<sup>15</sup> Rivers and Harbors Appropriation Act of 1899, ch. 425, 30 Stat. 1121 (codified as amended at 33 U.S.C. § 403); Act of May 25, 1900, ch. 553, 31 Stat. 187 (codified as amended at 16 U.S.C. §§ 3371-3378); U.S. DEP't of Just, <https://www.justice.gov/enrd/about-division/historical-development-environmental-criminal-law> (May 13, 2015).

Conservation and Recovery Act (RCRA)<sup>16</sup>, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).<sup>17</sup>

Felony provisions and penalties for criminal violations were added to federal statutes during the 1980s, including RCRA in 1984, CWA in 1987, CAA in 1990, and then followed other major statutes.<sup>18</sup> The EPA's Office of Enforcement, later called the Office of Enforcement and Compliance Assurance (OECA)<sup>19</sup> was founded in 1981, and the following year, criminal investigators were hired.<sup>21</sup> In 1990, the Pollution Prosecution Act became law—it greatly expanded the statutory minimum number of EPA criminal investigators that could be hired and surpassed the 200 minimum in the following years. About 145 EPA criminal investigators are currently tasked with investigating where environmental crimes are located.<sup>22</sup> The DOJ's Environmental Crimes Section (DOJ-ECS) was founded in 1982. It was housed within the Environment and Natural Resources Division (ENRD) to provide additional resources to prosecute environmental crimes.<sup>23</sup> Today, DOJ-ECS employs about 43

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<sup>16</sup> Prosecuting corporate officers for hazardous waste crimes was one example of the need to enhance penalties in federal environmental statutes, see David T. Barton, Note & Comment, *Corporate Officer Liability under RCRA: Stringent but not Strict*, 1991 BYU L. REV. 1547, 1548-50 (1991).

<sup>17</sup> Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816 (codified as amended at 33 U.S.C. § 1251); Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (formerly codified at 42 U.S.C. §§ 1857-1860) (current version at 42 U.S.C. §§ 7401-7646 (Supp. IV 1980); Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, 90 Stat. 2795 (current version at 42 U.S.C. § 6901); Federal Environmental Pesticide Control Act of 1972, Pub. L. No. 92-516, 86 Stat. 973 (codified as amended at 7 U.S.C. § 136); Prosecuting corporate officers for hazardous waste crimes was one example of the need to enhance penalties in federal environmental statutes; David T. Barton, Note & Comment, *Corporate Officer Liability under RCRA: Stringent but not Strict*, 1991 BYU L. REV. 1547, 1548-50 (1991).

<sup>18</sup> U.S. Department of Justice Environmental Crimes Section, 2015, <https://www.justice.gov/enrd/about-division/historical-development-environmental-criminal-law> (May 13, 2015), for a general summary of the criminal provisions of environmental laws, see *Criminal Provisions of the Clean Air Act*, ENV'T PROT. AGENCY (Mar. 30, 2022), <https://www.epa.gov/enforcement/criminal-provisions-clean-air-act> [<https://perma.cc/4G4G-62ST>]; *Criminal Provisions of Water Pollution*, ENV'T PROT. AGENCY (Nov. 18, 2021), <https://www.epa.gov/enforcement/criminal-provisions-water-pollution> [<https://perma.cc/9XA4-EKNU>].

<sup>19</sup> *About the Office of Enforcement and Compliance Assurance (OECA)*, ENV'T PROT. AGENCY (Sept. 21, 2022), <https://www.epa.gov/aboutepa/about-office-enforcement-and-compliance-assurance-oece> [<https://perma.cc/FD8T-T9BY>].

<sup>21</sup> Memorandum from John Peter Suarez, Assistant Admin. to All OCEFT 7 (Dec. 15, 2003), <https://www.epa.gov/sites/production/files/documents/oceft-review03.pdf> [<https://perma.cc/X563-Y3UF>].

<sup>22</sup> Pollution Prosecution Act of 1990, Pub. L. No. 101-593, § 202, Stat. 2962. Act required statutory minimum of 200 investigative staff for EPA-CID, beginning in 1995, the number of special agents varies by source, depending on whether administrators and/or staff are included in official figures, see Env't Prot. Agency, U.S. Environmental Protection Agency Criminal Enforcement Program: America's Environmental Crime Fighters (2022), <https://www.epa.gov/sites/production/files/documents/oceftbrochure.pdf> [<https://perma.cc/99SV-UQWM>]; *EPA CID Agent Count*, PUB. EMP. ENV'T RESP. (Nov. 11, 2019), [https://www.pecr.org/wp-content/uploads/2019/11/11\\_21\\_19-Federal-Pollution-EPA-CID-Agent-Count.pdf](https://www.pecr.org/wp-content/uploads/2019/11/11_21_19-Federal-Pollution-EPA-CID-Agent-Count.pdf) [<https://perma.cc/N3KX-D9GY>].

<sup>23</sup> The Public Lands Division, founded in 1909, was the predecessor to ENRD, see *An Overview of our Practice*, U.S. DEP'T OF JUST. (May 14, 2015), <https://www.justice.gov/enrd/overview-our-practice> [<https://perma.cc/8VDJ-U52F>]; *History*, U.S. DEP'T OF JUST. (May 18, 2021), <https://www.justice.gov/enrd/history> [<https://perma.cc/CS5P-JKX9>]; U.S. EPA, *supra*, note 21.

staff attorneys and a dozen support staff to assist in the prosecution of environmental crimes.<sup>24</sup>

The process of criminal enforcement is collaborative. It involves investigators in EPA, Criminal Investigation Division (CID) and prosecutors in DOJ-ECS. Task forces are often assembled to investigate crimes in partnership with state, local, and federal law enforcement agencies. Investigators rely on a variety of sources to build cases including former employees, whistleblowers, regulatory paperwork and other required filings, and information obtained from civil inspections.<sup>25</sup> When investigators gather sufficient evidence about a crime, they may approach prosecutors within DOJ-ECS or the U.S. Attorney's Office to convene a grand jury or file a criminal information in district court.<sup>26</sup>

## II. THE POLITICS OF CRIMINAL ENFORCEMENT

The development and evolution of the day-to-day practice of policing and prosecuting environmental crimes came about and is practiced within a partisan environment. Support for stronger enforcement has always been a politically contentious issue. While overseeing the founding of EPA and passage of major environmental laws, Richard Nixon was no fan of environmental regulation and Ronald Reagan was openly hostile to environmental regulation and enforcement, appointing Anne Gorsuch Burford as Administrator of EPA, who subsequently cut enforcement actions, attempted to slash budgets, and disbanded early efforts to institutionalize criminal enforcement processes.<sup>27</sup> Many of these actions were successful, until Gorsuch Burford was removed by Congress, and William Ruckelshaus was reinstated as Administrator. Ruckelshaus reformed and allowed criminal enforcement functions to proceed.<sup>28</sup> In the 1980s the EPA-CID and DOJ-ECS were institutionalized, funding was

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<sup>24</sup> *Historical Development of Environmental Criminal Law*, U.S. DEP'T OF JUST. (May 13, 2015), <https://www.justice.gov/enrd/about-division/historical-development-environmental-criminal-law> [<https://perma.cc/SEB3-78FT>], these figures are accurate as of 2015, *see Environmental Crimes Section*, U.S. DEP'T OF JUST. (July 2, 2021), <https://www.justice.gov/enrd/environmental-crimes-section> [<https://perma.cc/M7MY-DRR4>].

<sup>25</sup> Case may also be forwarded to state or local officials for prosecution. For the role of sources, *see* Joel A. Mintz, *Some Thoughts on the Interdisciplinary Aspects of Environmental Enforcement*, 36 ENV'T L. REP. 10495 (2006).

<sup>26</sup> For a broader discussion of criminal investigators, *see* Joel A. Mintz, *Some Thoughts on the Interdisciplinary Aspects of Environmental Enforcement*, 36 ENV'T L. REP. 10495 (2006).

<sup>27</sup> Mintz, *supra* at 10.

<sup>28</sup> William Ruckelshaus was the first Administrator of the EPA from 1970-73, and then 1983-85 when he replaced Gorsuch, *see* Cally Carswell, *How Reagan's EPA Chief Paved the Way for Trump's Assault on the Agency*, THE NEW REPUBLIC (Mar. 21, 2017), <https://newrepublic.com/article/141471/reagans-epa-chief-paved-way-trumps-assault-agency> [<https://perma.cc/HP3T-C4E7>]; criminal enforcement was dismantled under Gorsuch, but the functions were distributed across EPA until being later restored, *see* Memorandum from John Peter Suarez, *supra* at 22, pages 5-7; David M. Uhlmann, *Environmental Crime Comes of Age: The Evolution of Criminal Enforcement in the Environmental Regulatory Scheme*, UTAH L. REV. 1223, 1223-52 (2009);

stabilized, and the creation and enforcement of felony provisions in major federal statutes was commenced despite Republican opposition.<sup>29</sup>

These changes made their way through the “tough on crime” era that also corresponded to a larger, global push to criminalize serious environmental offenses. However, that bipartisanship began to wane by the time Bill Clinton took office, and financial support for environmental enforcement began to stagnate.<sup>30</sup> While supportive of environmental enforcement, Clinton began moving away from traditional deterrence approaches to crime fighting and instead began to focus on incentivizing compliance by allowing companies flexible strategies to comply with environmental rules.<sup>31</sup> Under the George W. Bush regime, resources continued to flatten out and political insiders increasingly received the executive positions rather than the career staff. While at the same time, the ideological push from the Reagan era to return enforcement authority to the states was renewed.<sup>32</sup>

With a few exceptions, funding for enforcement remained flat during the Obama era, and like the Clinton presidency, major investments to offset Republican influence did not materialize under either Democratic president.<sup>33</sup> By the 1990s, resources stabilized and a period of stagnation began in real terms. It was not until Donald Trump took office that the most subversive attacks on the EPA’s mission occurred, surpassing even those implemented by the Reagan administration. The attacks brought about attempts to slash the EPA’s budget and demoralize the agency, resulting in 700 staff members leaving the agency, and former staffers

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Wash. Legal Found., *Special Report: Federal Erosion of Business Civil Liberties*, WASH. LEGAL FOUND. (2008), <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/WLF%20timeline.pdf> [<https://perma.cc/Y6SU-K7F9>]; Richard J. Lazarus, *Assimilating Environmental Protection into Legal Rules and the Problem with Environmental Crime*, 27 LOY. L. REV. 867, (1994).

<sup>30</sup> As prosecutors and investigators utilized these enhanced felony provisions and pushed for more prosecutions, bipartisanship waned, see Galactos, *supra* note 9; Richard J. Lazarus, *Assimilating Environmental Protection into Legal Rules and the Problem with Environmental Crime*, 27 LOY. L. REV. 867, (1994); Judson W. Starr, *Turbulent Times at Justice and EPA: The Origins of Environmental Criminal Prosecutions and the Work that Remains*, 59 GEO. WASH. L. REV. 900, 900-02 (1991), this movement was part of a larger global movement to punish environmental offenders, see Michael R. Pendleton, *Beyond the Threshold: The Criminalization of Logging*, SOC’Y & NAT. RES. at 191-193 (Nov. 21, 2008) [<https://perma.cc/L2MC-GF45>].

<sup>31</sup> See Mintz, *supra* note 13 at 10390, a good example of flexible regulation is EPA’s “Aiming for Excellence” initiative, see U.S. Env’t. Prot. Agency, *Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental*, EPA (July, 1999), <https://permanent.fdlp.gov/websites/epagov/www.epa.gov/innovation/report99.pdf> [<https://perma.cc/2GF9-HA5B>].

<sup>32</sup> See Mintz, *supra* note 22 at 10951.

<sup>33</sup> U.S. Env’t. Prot. Agency, *supra* note 11, some suggested enforcement actions were actually higher during the Bush administration, however but this may simply be attributed to the persistence of prosecutors and career staff working across bad situations over time, see David M. Uhlmann, *Strange Bedfellows*, 25 ENV’T FORUM, 40, 40-44 (2008), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2681&context=articles> [<https://perma.cc/JGS8-VA7D>].

organizing politically against the administration.<sup>34</sup> While the promised budget cuts did not materialize, the funding was stagnant, and staff was not replaced. The administration continued to batter the agency in public, removed scientists from key advisory panels, placed restrictions on prosecutorial tools (to limit prosecution), removed key provisions in major statutes (such as the CWA and CAA) to render them less effective, and appointed a climate change denier to run the EPA.<sup>35</sup> Subsequently, prosecutions and injunctive relief declined during the first half of the Trump Era.<sup>36</sup> Toward the end of his term, Trump even went so far as to pressure the head of ENRD, Jeffrey Clark, to influence staff to overturn the result of the 2020 presidential election.<sup>37</sup>

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<sup>34</sup> Elgie Holstein, *The Severe, Real-World Casualties of Trump's EPA Budget Cuts*, EDF VOICES BLOG (Mar. 3, 2017), <https://www.edf.org/blog/2017/03/03/severe-real-world-casualties-trumps-epa-budget-cuts> [https://perma.cc/D9EE-48T6]; Jay Michaelson, *The Ten Worst Things Scott Pruitt's EPA Has Already Done*, THE DAILY BEAST (Dec. 29, 2017, 5:00AM), <https://www.thedailybeast.com/the-ten-worst-things-scott-pruitts-epa-has-already-done> [https://perma.cc/6EC9-64N7]; Valerie Volcovici, *U.S. EPA Employees Protest Trump's Pick to Run Agency*, REUTERS (Feb. 6, 2017, 3:12 PM), <https://www.reuters.com/article/usa-epa-pruitt-idUSL1N1FR1NZ> [https://perma.cc/G6P2-BPJ2]; Am. Fed'n of Gov't Emp., *AFGE EPA Council Launches "Save the Environment" Campaign*, AFGE (August 05, 2011), <https://www.afge.org/publication/afge-epa-council-launches-save-the-environment-campaign/> [https://perma.cc/4HDD-GW2H]; Yaron Steinbuch, *Inside the Mass Exodus at the EPA*, NEW YORK POST (last updated Dec. 22, 2017, 11:31 AM), <https://nypost.com/2017/12/22/hundreds-have-quit-the-epa-since-trump-took-office/> [https://perma.cc/H6W3-5SRZ].

<sup>35</sup> The Trump Administration focused efforts to rollback many important provisions of the CWA, particularly Section 401 permits that had been denied by many states, see Eric L. Christensen, *Supreme Court Wades Into Troubled Waters, Brings Trump Administration State Water Quality Certification Rule Back to Life*, 12 THE NAT'L L. REV. (Apr. 12, 2022), <https://www.natlawreview.com/article/supreme-court-wades-troubled-waters-brings-trump-administration-state-water-quality> [https://perma.cc/AZM5-KXVK]; Peter Kalicki, *Section 401 of the Clean Water Act from Trump to Biden*, HARV. L. SCH. ENV'T AND ENERGY L. PROGRAM (Jan. 25, 2021), <https://eelp.law.harvard.edu/2021/01/section-401-of-the-clean-water-act-from-trump-to-biden/> [https://perma.cc/BV8Q-JLGC]; Env't. Integrity Project, *Trump's War on the Environment*, ENV'T. INTEGRITY PROJECT, <https://environmentalintegrity.org/trump-watch-epa/> [https://perma.cc/FC9D-N8W6].

<sup>36</sup> David M. Uhlmann, *New Environmental Crimes Project Data Shows that Pollution Prosecutions Plummeted During the First Two Years of the Trump Administration*, 685 MICH. L. (2020), <https://ssrn.com/abstract=3710109> [https://perma.cc/KAS9-M7TL]; U.S. Env't. Prot. Agency Off. of Inspector Gen., *EPA's Compliance Monitoring Activities, Enforcement Actions, and Enforcement Results Generally Declined from Fiscal Years 2006 through 2018*, EPA (Mar. 31, 2020), [https://www.epa.gov/sites/production/files/2020-04/documents/\\_epa\\_ig\\_20200331\\_20-p-0131\\_0.pdf](https://www.epa.gov/sites/production/files/2020-04/documents/_epa_ig_20200331_20-p-0131_0.pdf) [https://perma.cc/L6WD-36KF].

<sup>37</sup> STAFF OF S. COMM. ON THE JUDICIARY, 117TH CONG., SUBVERTING JUSTICE: HOW THE FORMER PRESIDENT AND HIS ALLIES PRESSURED DOJ TO OVERTURN THE 2020 ELECTION (2021), <https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf> [https://perma.cc/NS66-NADD]; Katie Benner & Charlie Savage, *Jeffrey Clark was Considered Unassuming. Then he Plotted with Trump*, THE NEW YORK TIMES (last updated Oct. 13, 2022), <https://www.nytimes.com/2021/01/24/us/politics/jeffrey-clark-trump-election.html> [https://perma.cc/M327-XADL]; Robert D. Boley & J. Michael Showalter, *Three Strikes and the EPA's Scientist Advisory Committees Directive May be Out*, THE NAT'L L. REV. (Apr. 29, 2020), <https://www.natlawreview.com/article/three-strikes-and-epa-s-scientist-advisory-committees-directive-may-be-out> [https://perma.cc/44DC-48YT]; Ellen M. Gilmer, *DOJ's Rapid Rollback of Trump Policies Marks Environmental Reset*, BL (Feb. 5, 2021, 9:35 AM), <https://news.bloomberglaw.com/business-and-practice/dojs-rapid-rollback-of-trump-policies-marks-environmental-reset?context=article-related> [https://perma.cc/F35G-ABCS]; Aaron McCade, *EPA Takes Steps to Undo Trump-Era Rollback of Protections Under Clean Water Act*, NEWSWEEK (Nov. 18, 2021, 10:35 PM), <https://www.newsweek.com/epa-takes-steps-undo-trump-era-rollback-protections-under-clean-water-act-1651054> [https://perma.cc/374P-EKXA]; Hana Vizcarra &

While Democratic presidents are vocally supportive of environmental enforcement, real budgetary support has stagnated since Clinton.<sup>39</sup> Republican presidents have worked to demoralize enforcement agencies and cut funding, but even Trump was not able to completely defund the criminal enforcement apparatus.<sup>40</sup> The picture that emerges is less of one where Democrats save the day and Republicans destroy it, but more of one where there is a constant back and forth over the decades between the parties with stagnant and declining investments.<sup>41</sup>

### III. DATA AND ANALYSIS

All of the data for our analysis comes from the EPA's *Summary of Criminal Prosecutions Database*, which provides case summaries for all criminal prosecutions resulting from EPA-CID criminal investigations from 1983 to 2021.<sup>42</sup> We catalog and search the database by fiscal year (FY), beginning with the first case we find in the database until the end of coding (April 30, 2022). EPA's database provides a rich resource for understanding the nature of TSCA criminal prosecutions across time and partisan administrations. We code all cases beginning with the Reagan Administration (1983) through the Biden Administration (2021).<sup>43</sup> The database is the only source of data for our analysis. Any cases excluded by EPA are unknown, and if they exist, they are not captured in the study.

A grand total of 2,728 criminal prosecutions were coded in our analysis. We then selected all prosecutions where a defendant was charged for criminal violations of TSCA. This left us with a sum total of 75 prosecutions for our study. When analyzing each case summary, we coded the following variables: a narrative case summary for the prosecution; docket number; state identifier; FY identifier; total named defendants in the case; whether a company or corporation was charged in the case;

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Lauren Bloomer, *DOJ Phases Out Supplemental Environmental Projects in Environmental Enforcement*, HARV. L. SCH. ENV'T AND ENERGY L. PROGRAM (Aug. 06, 2020), <https://eelp.law.harvard.edu/2020/08/doj-phases-out-supplemental-environmental-projects-in-environmental-enforcement/> [https://perma.cc/328R-4AZF]; Evan Lehmann & Emily Holden, *Trump Budget Cuts Funds for EPA by 31 Percent*, SCIENTIFIC AMERICAN (Mar. 16, 2017), <https://www.scientificamerican.com/article/trump-budget-cuts-funds-for-epa-by-31-percent/> [https://perma.cc/K4TD-KM2U].

<sup>39</sup> For a review of these issues, see Joshua Ozymy & Melissa Jarrell, *Why do Regulatory Agencies Punish? The Impact of Political Principals, Agency Culture, and Transaction Costs in Predicting Environmental Criminal Prosecution Outcomes in the United States*, 33, *Rev. of Pol'y Res.*, 71-89 (2016); Joshua Ozymy & Melissa L. Jarrell, *Wielding the green stick: criminal enforcement at the EPA under the Bush and Obama administrations*, 24 *Env't Pol.* 38-56 (2015).

<sup>40</sup> For a comparison to Reagan here, see Jessica Hejny, *The Trump Administration and Environmental Policy: Reagan Redux?* 8 *J. of Env't Stud. and Sci.*, 197-211 (2018).

<sup>41</sup> Joel A. Mintz, *Running on Fumes: The Development of New EPA Regulations in an Era of Scarcity*, 46 *Env't L. Rep.* 10510-19 (2016).

<sup>42</sup> U.S. ENV'T PROT. AGENCY, *Summary of Criminal Prosecutions*, EPA (last updated July 5, 2022), <https://www.epa.gov/enforcement/summary-criminal-prosecutions> [https://perma.cc/2CRW-UVDW].

<sup>43</sup> One TSCA prosecution was adjudicated during the Biden Administration at time of writing. When discussing aggregate figures and comparing presidents below, we exclude this one case, given the limited data for Biden and discuss any relevant details as germane in the analysis that follows.

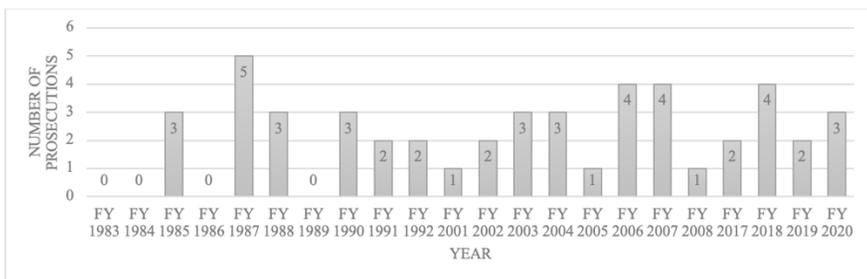
penalties in each case aggregated by individuals and companies including total months of probation and incarceration, and total monetary penalties including fines, special assessments, assessments, restitution, or any related monetary penalties.

In order to code the data, we employed content analysis. Two coders read and coded the data simultaneously and independently. A pilot phase commenced for four weeks to better comprehend data patterns and assess issues as they came up. Once we were reasonably confident in our understanding of the data, we proceeded with the full content analysis. If there were discrepancies between coders, they would be reviewed by one of the authors, and then we would all meet to find a consensus on values. The typical discrepancy concerned complex prosecutions with multiple defendants and numerous penalties. The inter-coder reliability for our study was approximately 95 percent.<sup>44</sup>

#### IV. RESULTS

We begin the analysis in Figure 1, which displays the total number of TSCA criminal prosecutions adjudicated by fiscal year across Republican presidents from Reagan to Trump. During the Reagan/Bush Era, prosecutions got off the ground, and we find the first three prosecutions were adjudicated in 1985. By 1987, five prosecutions were adjudicated, representing the high point of this time period. Total prosecutions reached 18 by the end Bush's presidency on January 20, 1993. Under G.W. Bush, total prosecutions reached 19 by the end of his two terms in office. Under Trump, a total of 11 prosecutions were adjudicated during his one term in office. A grand total of 48 prosecutions were adjudicated under Republicans over time, with an annual average of 2.18.

Figure 1. Annual TSCA Prosecutions Adjudicated Under Republican Presidents by Fiscal Year.

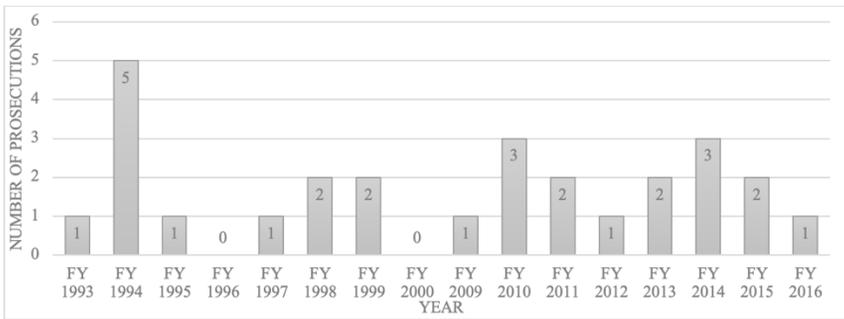


Source: EPA Summary of Criminal Prosecutions Database

<sup>44</sup> By dividing the agreed upon items by non-agreed items. See Ole R. Holsti, *Content Analysis for the Social Sciences and Humanities*, 140 (Reading, Mass., Addison-Wesley Pub. Co. 1969).

In Figure 2, we explore total TSCA prosecutions adjudicated under Democratic presidents. Prosecutions under Clinton totaled 12 by the time he left office, lagging totals achieved during the Reagan, Bush, and G.W. Bush presidencies. Prosecutions increased during Obama’s presidency, totaling 15 by the time he left office. We find one prosecution adjudicated at the time of writing during the Biden Administration. Prosecutions under Clinton and Obama totaled 27 with an annual average of 1.68, which both lag behind the results under Republican presidents in our analysis.

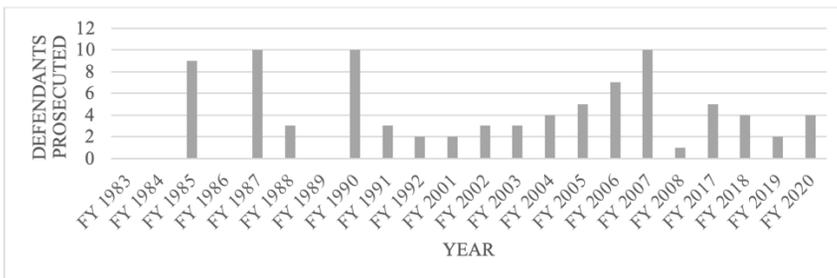
Figure 2. Annual TSCA Prosecutions Adjudicated Under Democratic Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 3, we explore the total number of defendants charged in TSCA prosecutions under Republican presidents. During the Reagan/Bush Administrations, a total of 37 defendants were prosecuted and under G.W. Bush, this total increased significantly to 35 defendants during his administration, whereas the Trump Administration prosecuted 15 defendants. A grand total of 87 defendants were prosecuted under Republican presidents, with an annual average of 3.95.

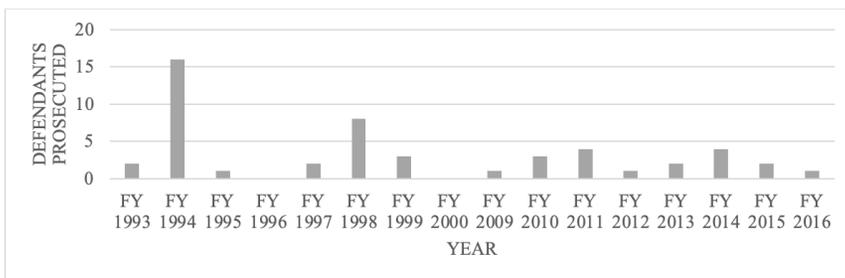
Figure 3. Total TSCA Defendants Prosecuted Under Republican Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 4, we explore the total number of defendants prosecuted in TSCA prosecutions under Democratic presidents. Under Clinton, a total of 32 defendants were prosecuted. Under Obama, the total defendants prosecuted declined to 18, with 50 defendants prosecuted across both presidents, with an annual average of 3.12. One defendant was prosecuted thus far under the Biden Administration. Republicans exceed Democrats in our analysis of the total and annual defendants prosecuted.

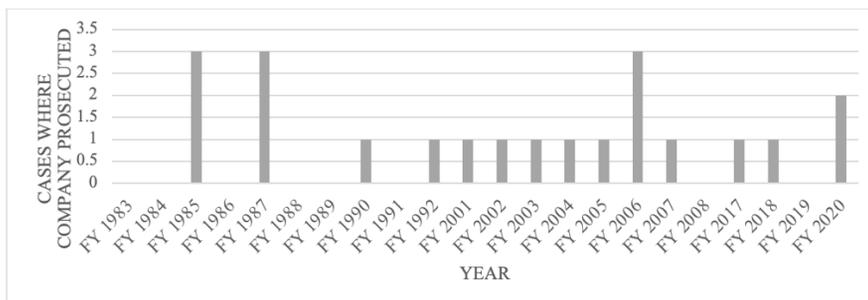
Figure 4. Total TSCA Defendants Prosecuted Under Democratic Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 5, we explore total TSCA prosecutions with at least one company as a named defendant under Republican presidents. During the Reagan/Bush Administrations, a total of eight prosecutions involved at least one company as a named defendant in the case. Under G.W. Bush, a total of nine cases involved at least one company, and under Trump, four cases with at least one company as a named defendant were prosecuted. A grand total of 21 cases were prosecuted involving at least one company as a named defendant under Republicans in our analysis, averaging a little less than one prosecution annually.

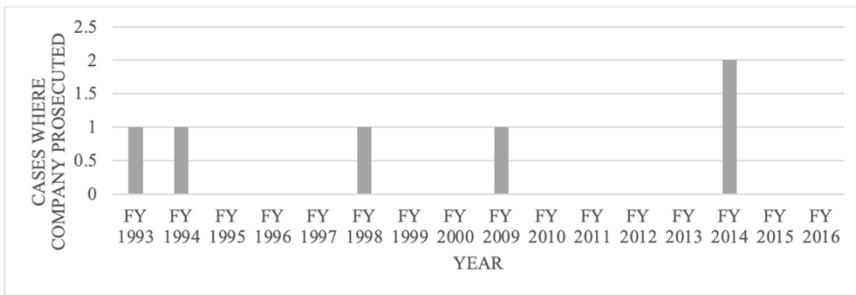
Figure 5. Total TSCA Prosecutions Involving Companies Under Republican Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 6, we explore total TSCA prosecutions involving at least one company as a named defendant under Democratic presidents. During the Clinton Era, only three prosecutions involved a company as a named defendant. During Obama’s presidency, only three prosecutions involved a named defendant, totaling a mere six cases across both presidencies, averaging only .37 per year. No cases involve companies as named defendants during the Biden Era at the time of writing. Compared to Republicans, Democrats lag on both total annual TSCA prosecutions of companies in our analysis.

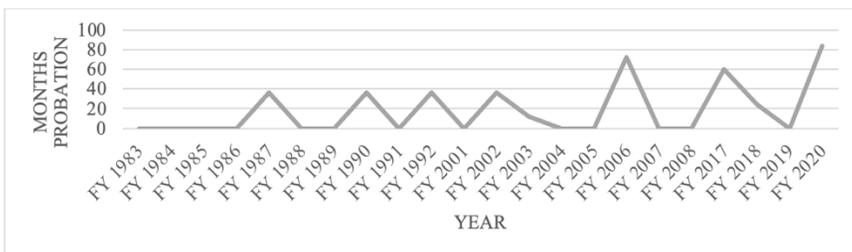
Figure 6. Total TSCA Prosecutions Involving Companies Under Democratic Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 7, we explore total probation time (in months) assessed to companies in TSCA prosecutions under Republican presidents. Companies were sentenced to a total of 108 months of probation during the Reagan/Bush Era. During the G.W. Bush presidency, companies were sentenced to 120 months of probation. Under Trump, companies were sentenced to 168 months of probation. Total probation assessed to companies in TSCA prosecutions under Republican presidents was 396 months, with an annual average of 18 months per year.

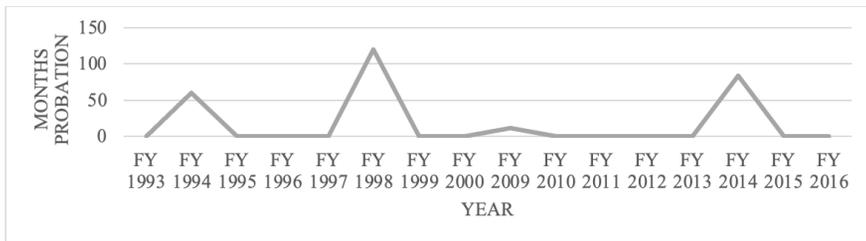
Figure 7. Total Probation Time (in Months) Assessed to Companies in TSCA Prosecutions Under Republican Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 8, we explore total months of probation assessed to companies in TSCA prosecutions under Democratic presidents. Under Clinton, a total of 180 months probation were assessed to companies and 96 months probation were assessed under Obama. Across both presidencies, a grand total of 276 months probation were assessed, with an annual average of 17.25. No probation time has been assessed to companies under Biden at the time of this writing. Compared to Republicans, Democrats lag in total probation, but the annual average is only slightly lower.

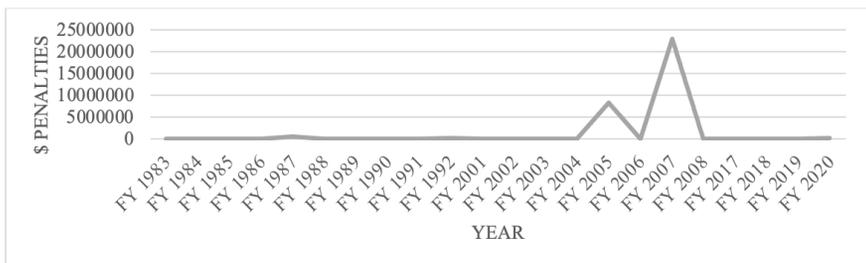
Figure 8. Total Probation Time (in Months) Assessed to Companies in TSCA Prosecutions Under Democratic Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 9, we examine total monetary penalties assessed to companies in TSCA prosecutions under Republican presidents. Under Reagan and G.H.W. Bush, monetary penalties assessed to companies exceeded \$1.1 million. Under G.W. Bush, penalties exceeded \$31 million. Under Trump, penalties were \$241,600. Overall monetary penalties across Republican presidents exceed \$32 million, with an annual average exceeding \$1.4 million.

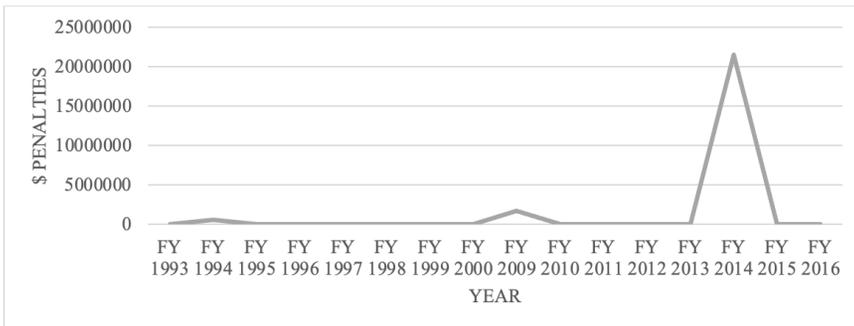
Figure 9. Total Monetary Penalties Assessed to Companies in TSCA Prosecutions Under Republican Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 10, we explore total monetary penalties assessed to companies in TSCA prosecutions under Democratic presidents. Under Clinton, penalties were a little over \$501,000. Under Obama, penalties exceeded \$23 million, with a grand total across both presidencies of \$23.1 million, and with an annual average of \$1.4 million. Compared to prosecutions under Republicans, prosecutions under Democrats returned fewer penalties, but the annual average was similar.

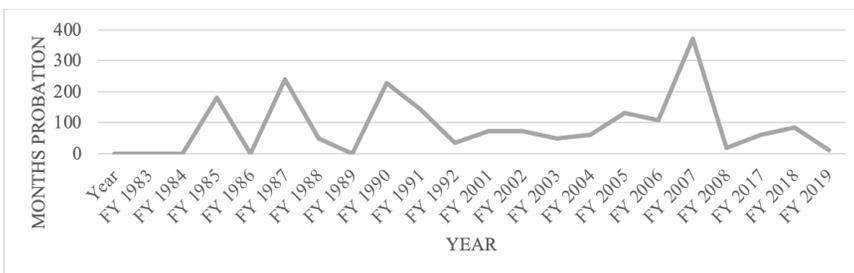
Figure 10. Total Monetary Penalties Assessed to Companies in TSCA Prosecutions Under Democratic Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 11, we explore total months of probation assessed to individual defendants in TSCA prosecutions under Republican presidents. In the Reagan and G.H.W. Bush eras, 876 months of probation were assessed to individual defendants. Probation increased under G.W. Bush to 882 months during his two terms in office. During Trump’s one term in office, defendants received 192 months of probation. The total probation assessed to individual defendants under Republican presidents in our analysis was 1,950 months, with an annual average of about eighty-nine months.

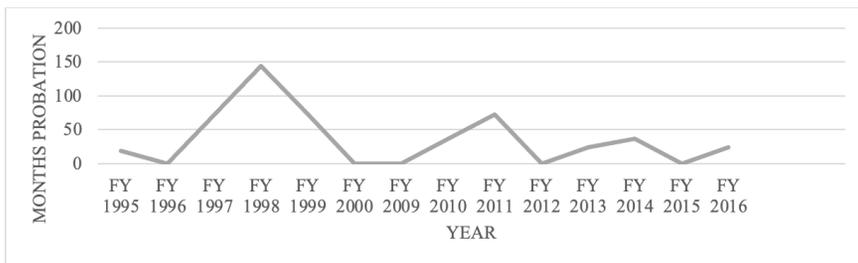
Figure 11. Total Probation (in Months) Assessed to Individuals in TSCA Prosecutions Under Republican Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 12, we explore total probation in months assessed to individual defendants in TSCA prosecutions under Democratic presidents. During the Clinton era, we find total probation equaled 510 months during Clinton’s two terms in office. During the Obama Administration, only 192 months of probation were assessed to individual defendants, for a grand total of 702 months, or an average of about 44 months annually across both presidents. On both metrics, Republican totals exceed that of Democrats in our analysis. We find 12 months of probation assessed to individual defendants at this juncture in the Biden Administration.

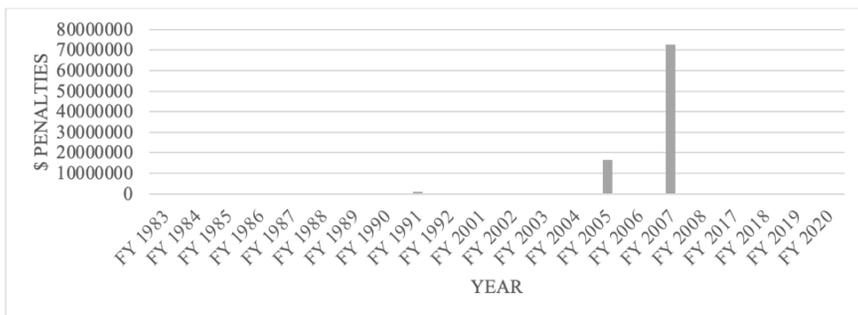
Figure 12. Total Probation (in Months) Assessed to Individuals in TSCA Prosecutions Under Democratic Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 13, we show total monetary penalties assessed to individual defendants in TSCA prosecutions under Republican presidents. During the Reagan and G.H.W. Bush eras, over \$1.1 million in monetary penalties were assessed to individual defendants. During G.W. Bush’s two terms in office, penalties increased substantially, exceeding \$89 million. Only about \$186,000 in penalties were assessed under Trump. Total penalties assessed to individual defendants under Republican presidents exceeded \$90 million, with an annual average of about \$4.1 million.

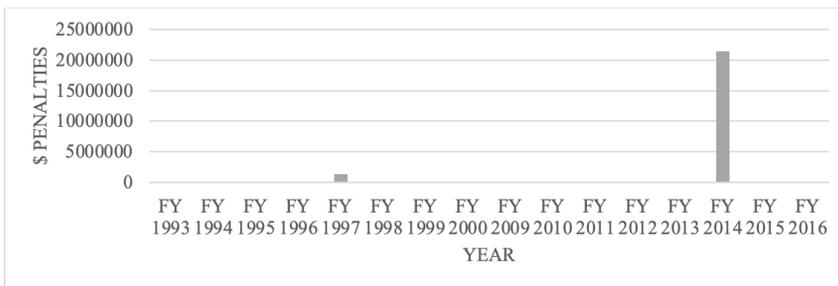
Figure 13. Total Monetary Penalties Assessed to Individuals in TSCA Prosecutions Under Republican Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 14, we show total monetary penalties assessed to individual defendants under Democratic presidents. During the Clinton Era, a little less than \$1.4 million in monetary penalties were assessed to defendants. During the Obama era, these totals increased markedly to exceed \$21 million. Total penalties under both presidents exceeded \$22.8 million, with an annual average of \$1.4 million. We catalog \$1,500 in penalties thus far under the Biden Administration. On both metrics, Republican totals exceed Democrats.<sup>45</sup>

Figure 14. Total Monetary Penalties Assessed to Individuals in TSCA Prosecutions Under Democratic Presidents by Fiscal Year.

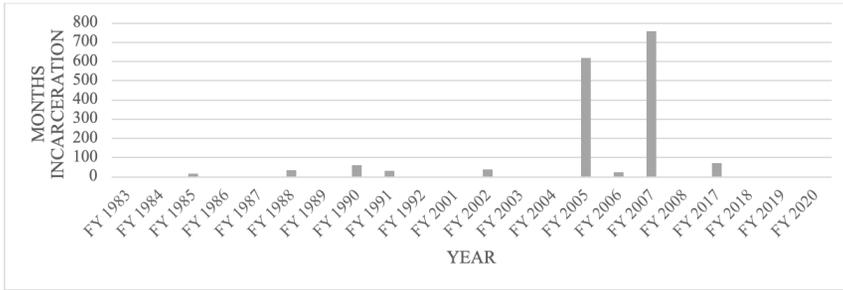


Source: EPA Summary of Criminal Prosecutions Database

In Figure 15, we explore total incarceration time assessed to individual defendants in TSCA prosecutions under Republican presidents. Incarceration time for TSCA crimes during Reagan and Bush totaled 141 months during their time in office. Total incarceration time increased significantly under G.W. Bush to 1,442 months. During the Trump Administration, incarceration time declined to 74 months for TSCA crimes. A grand total of 1,657 months of incarceration time was assessed to defendants under Republican presidents, with an annual average of about 75 months.

Figure 15. Total Incarceration Time (in Months) Assessed to Individuals in TSCA Prosecutions Under Republican Presidents by Fiscal Year.

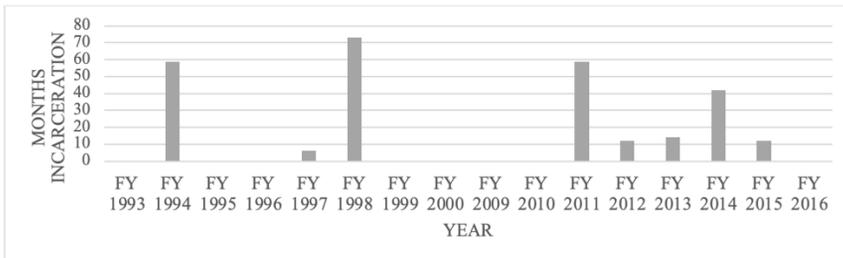
<sup>45</sup> Monetary penalties are skewed by the prosecution of Eric Farbent (N.D. New York 02-CR-51, 2007) and related prosecution of AAR Contractor, Inc. (N.D. New York 5:02-CR-51, 2005). These cases account for over tens of millions in penalties to individuals and companies. The prosecution of Benjamin Franklin Pass (E.D. North Carolina 7:12-CR-85-1-D, 2014) and P&W Oil Company, Inc was also an outlier in the data. Pass and the company were prosecuted for unlawful handling of Polychlorinated Biphenyls (PCBs) and were each sentenced to pay over \$21 million in restitution.



Source: EPA Summary of Criminal Prosecutions Database

In Figure 16, we display total months of incarceration assessed to individual defendants in TSCA prosecutions under Democratic presidents. Prison time assessed during the Clinton Era totaled 138 months. During Obama’s presidency, a total of 139 months was assessed for a grand total of 277 months under both presidents, with an annual average of about 17 months. No incarceration for TSCA crimes was recorded at this juncture during the Biden Administration. Compared to Republican presidents, Democrats lag on both overall and annual average incarceration assessed for TSCA crimes.<sup>46</sup>

Figure 16. Total Incarceration Time (in Months) Assessed to Individuals in TSCA Prosecutions Under Democratic Presidents by Fiscal Year.



Source: EPA Summary of Criminal Prosecutions Database

V. DISCUSSION

Republican and Democratic presidents have embodied divergent philosophies on the enforcement of environmental law since the inception of the criminal enforcement apparatus. In this article, we question whether these different ideologies result in extremely varied outcomes when it comes to TSCA prosecutions occurring from Reagan through the Trump

<sup>46</sup> Much of the difference in prison sentences across parties can be attributed to the prosecution of Eric Farber (N.D. New York 02-CR-51, 2007) and five other co-defendants for a variety of charges, including TSCA charges related to a ten-year conspiracy to unlawfully remove asbestos and provide falsified air monitoring reports across New York State. The defendants were cumulatively sentenced to 746 months incarceration in the case.

administration. Our findings shed light on penalties assessed in TSCA prosecutions and tell us how criminal investigators and prosecutors were able to do their important work under varied levels of political and financial support over almost four decades of criminal prosecutions.<sup>47</sup>

Reagan's opposition to enforcement was strong, and he made sure to use his powers over administrative appointment and the budget to constrain the EPA's ability to get criminal enforcement off the ground. The EPA and DOJ managed to navigate this environment and institutionalized resources after a rocky start in the 1980s. Furthermore, these agencies secured additional resources for criminal investigations and prosecutions in addition to Congress enhancing criminal statutes and punishments for environmental crimes. By the Clinton Era, public bipartisan support began to wane, and significant resources promised by Democratic presidents failed to emerge.<sup>48</sup> While Trump had a real-world impact on government agencies' budgets, this impact for important agencies, like the EPA, was flat. Although, Trump's actions did exacerbate a longer-term trend towards fewer staff.<sup>49</sup>

When we look at outcomes in TSCA prosecutions, we find somewhat mixed results; however, overall penalties in most metrics are higher under Republican presidents than Democratic presidents. The total number of prosecutions, including individual defendants and companies prosecuted, was higher under Republican presidents than Democratic ones. Total probation assessed to companies was higher under Republicans, but the annual average across Republicans and Democrats was similar. Probation and monetary penalties assessed to companies was significantly higher under Republicans as were monetary penalties assessed to individual defendants.

## VI. CONCLUSION

Budgetary support for criminal enforcement since the end of the Clinton Era might best be described as ungenerous, with career staff learning to persist and do their job, but by no means thriving under increasingly severe financial constraints.<sup>50</sup> This failure to pursue prosecutions is likely due to the difficulty and complexity of environmental criminal investigation and a failure to adequately support and increase the agency's staff since the Clinton Era. In FY 2022, for example, the Biden Administration proposed a budgetary allotment to the EPA of \$11 billion, with funds to hire 15,000 staff. Upon execution, the

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<sup>47</sup> Mintz, *supra* note 41, at 10510-19.

<sup>48</sup> U.S. Env't. Prot. Agency, *supra* note 11.

<sup>49</sup> Holstein, *supra* note 35.

<sup>50</sup> See Mintz, *supra* note 13 at 10390.

U.S. Env't. Prot. Agency, *supra* note 11.

Calculations to adjust EPA's budget for inflation can be made by taking the nominal budget total for any fiscal year and calculating inflation in 2022 dollars, based on the Consumer Price Index through the Inflation Calculator:

*U.S. Inflation Calculator*, <https://www.usinflationcalculator.com/> (Oct. 13, 2022).

actual appropriation comes in at \$9.5 billion and 14,581 staff.<sup>51</sup> These represent positive budgetary commitments, but obscure a deeper, long-term disinvestment that would return the agency to funding levels from the Obama Era. If adjusted for inflation, the strongest budgetary investment made in the EPA was FY 1980, and the high point for staffing was 18,110 in FY 1999.<sup>52</sup> Staffing for criminal investigators has also been flat since the Clinton Era. The Pollution Prosecution Act set a statutory minimum of 200, but by 2019, there were only 145 criminal investigators staffed. Even the Obama Administration failed to keep pace with staffing levels from presidential administrations from the late 1990s. Even when looking at the ENRD's proposed [year] budget of \$133 million, the agency's budget will mirror that of a decade ago, and, considering inflation, this will constitute a budgetary decrease for the agency.<sup>53</sup>

For significant changes in criminal enforcement to occur, it seems prudent for Democratic presidents to make major investments in environmental agencies in the coming years. If Biden is a likely indicator of what strong support looks like, these agencies are in trouble in the foreseeable future. Reversing long-term trends in financial disinvestment will take much more than returning to the nominal spending levels of a decade ago. However, this divestment can be reversed if there are substantive increases over time to agency budgets that also consider inflation, as well as updates and amendments to environmental statutes that have languished in Congress for years.

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<sup>51</sup> U.S. Env't. Prot. Agency, *supra* note 11.

U.S. Env't. Prot. Agency, *Statement by Administrator Reagan on the President's FY 2022 Budget*, EPA (June 2, 2021), <https://www.epa.gov/newsreleases/statement-administrator-regan-presidents-fy-2022-budget> [<https://perma.cc/8TAP-7ANB>].

<sup>52</sup> U.S. Env't. Prot. Agency, *supra* note 11.

*U.S. Inflation Calculator*, <https://www.usinflationcalculator.com/> (Oct. 13, 2022).

Search the Budget and Performance Summary for DOJ then look for the ENRD's budget. The data is found in the Archives for various years prior to FY 2015. See:

U.S. DEP'T. OF JUST., *supra* at 11.

<sup>53</sup> U.S. Dep't of Just., Env't and Nat. Res. Div., *FY 2023 Performance Budget Congressional Budget Justification*, U.S. DEP'T OF JUST., <https://www.justice.gov/jmd/page/file/1491706/download> [<https://perma.cc/Z6WU-HNT5>].