

Strategies for HEALTH JUSTICE: Lessons from the Field

Megan Haberle and Heidi Kurniawan, Editors
Poverty & Race Research Action Council

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Editors' Note

We are proud to offer this compilation of case studies, reflections, and strategic advice from fellow advocates who are working to advance structural change and make a concrete difference for communities throughout the country. Many of the authors explore the theme of synergy among advocacy strategies, such as organizing, litigation, policy engagement, and coalition-building. They also tell stories that speak eloquently to the connections among issue areas, such as health, environmental justice, and housing and community development. Many of these stories have roots in the structural dynamics that have long shaped health inequities across race, ethnicity, and income. Concentrated poverty, racism, and political and financial disempowerment intersect, especially because of our long history of racial segregation, and the work of addressing those problems is challenging. It takes dynamic, compassionate advocacy, strong partnership work, and not least persistence. We thank our authors and hope that you find inspiration, as we do, in their lessons from the field.

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In New York City, a handful of low-income communities and communities of color are home to the waste transfer stations and processing facilities that handle the vast majority of the city's garbage. Diesel-burning trucks collect and export the waste, bringing with them noxious air pollution, unsafe streets, and unwanted noise. For decades, community lawyers have been involved in the conversation about fixing inequities in the city's waste system. Challenges such as NIMBYism and the influence of the commercial waste industry have required steady progress through organizing, legislative and political advocacy, media, and litigation.

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faced by many school districts around the county, and major legal victories in these areas can be attributed to team work, coalition building, and community organization. Partnerships can help advocates overcome prevalent challenges, for example, the lack of data related to the presence of toxic substances in buildings, test results, and protocols. This case study discusses the importance of incorporating community insight and promoting community empowerment in working to make school environments safer and more equitable.

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Photographs courtesy of the section authors unless otherwise indicated.





Trash Tales: Lessons from the Fight for Waste Equity in NYC

By Melissa Iachan, Senior Staff Attorney in the Environmental Justice Program, New York Lawyers for the Public Interest, and Priya Mulgaonkar, Policy Organizer, New York City Environmental Justice Alliance

Melissa Iachan is a **Senior Staff Attorney in the Environmental Justice department** of the **New York Lawyers for the Public Interest (NYLPI)**. NYLPI is a social justice organization that was founded forty years ago to provide critical legal services and advocacy for New Yorkers in need. They provide services in environmental justice, health justice and disability rights programs through the community lawyering model. NYLPI's community lawyering model is a client driven process that promotes sustainable solutions and strategies for neighborhood empowerment. NYLPI also operates the Pro Bono Clearinghouse which coordinates volunteer efforts from the private bar and fosters capacity building for nonprofit organizations.

Priya Mulgaonkar is the **Resiliency Planner at the New York City Environmental Justice Alliance (NYC-EJA)**, a citywide membership network linking grassroots organizations from low-income neighborhoods and communities of color in their struggle for environmental justice. NYC-EJA empowers its member organizations to advocate for improved environmental conditions and against inequitable environmental burdens by the coordination of campaigns designed to inform City and State policies. Through its efforts, member organizations coalesce around specific common issues that threaten the ability for low-income communities of color to thrive.

How Waste Processing Became New York City's Biggest Environmental Justice Challenge

Garbage, food waste, refuse, trash – no matter what you call it, what we throw away has always been one of our most complicated environmental problems. The issues surrounding waste go far beyond reduction, reuse and recycling of materials. Particularly for environmental justice communities in a centuries-old, densely populated city like New York City, the question becomes: when space is at a premium, where is our trash going, and who bears the burden?



Today, just a handful of low-income communities and communities of color are home to the waste transfer stations and processing facilities that handle the vast majority of New York City's garbage. Hundreds of diesel-burning trucks collect and export the garbage, bringing with them noxious air pollution, unsafe streets, and unwanted noise. Many of the people who work collecting and processing this waste live in the same com-

munities that deal with the burdens associated with waste transfer stations. Meanwhile, New York's wealthiest communities are spared from any of this environmental harm.

How did we get here?

For many years, the city of New York operated a municipal landfill in Staten Island known as Fresh Kills – once the largest landfill in the world. Much of the residential waste collected by the Department of Sanitation (“DSNY”), as well as some collected by private waste haulers that pick up commercially-generated waste, was trucked to marine-based transfer stations along the city's waterfront, where the trash would be loaded onto barges and floated over to be dumped at Fresh Kills. In 1996, in response to many years of outcry from residents of Staten Island sick of having to handle trash from all five boroughs, the City announced it would close Fresh Kills and cease operating the aging marine transfer stations.

With the closing of New York's landfills and incinerators, the 20,000 tons of garbage generated in NYC each day had to go somewhere. Seeing the potential for lucrative city contracts, many private sanitation companies decided to open or expand land-based waste transfer stations, where garbage could be trucked, processed, and then packed onto long-haul trucks bound for landfills outside city limits. They looked to open these truck-intensive facilities in areas in or close to industrial or manufacturing zoned regions of the city such as North Brooklyn, the South Bronx, and Southeast Queens—all of which also were low-income communities, and communities of color.

Today, more than 20 years after the proliferation of private waste transfer stations, these three neighborhoods collectively handle more than two thirds of the entire city's waste. Not coincidentally, other polluting facilities—such as cement plants, wastewater treatment plants, and truck depots—are clustered in these neighborhoods as well. As a result, these environmental justice communities suffer negative health outcomes, including high asthma rates, cardiovascular disease, and cancer,

and face dangers every day from the hundreds of large commercial waste trucks tearing up side streets, blowing through stop signs, idling in front of residential areas, dropping litter and leaking leachate on their way to and from the transfer stations.

In 2006, after a decade of fighting back, environmental justice advocates achieved a major victory in the fight for a fair waste system. Former Mayor Bloomberg officially released the City's Solid Waste Management Plan ("SWMP"), which for the first time included principles of environmental equity, and incorporated a comprehensive plan to shift New York's waste export system from its reliance on diesel trucks back to a cleaner, more efficient system of marine- and rail-based export. By making this critical shift, the city projected that it would cut 5.5 million vehicle miles traveled from the road annually. And yet, 12 years after this plan was approved, the City has only opened two of the more modern and equitably-sited marine transfer stations. The fight for waste equity continues, and the South Bronx, North Brooklyn and Southeast Queens are still looking for relief.

Fighting for Waste Equity

A broad coalition came together to support the fight for a more equitable waste system, led by the NYC Environmental Justice Alliance (NYC-EJA), an organization founded in 1991 to link grassroots organizations in their struggle for environmental justice, in partnership with New York Lawyers for the Public Interest ("NYLPI"), a community lawyering civil rights non-profit that has worked on Environmental Justice issues for more than two decades—and has been involved in the conversation about fixing the inequities in our waste system for just as long. These two organizations, along with allies Teamsters Local 813 and the Natural Resources Defense Council, formed the waste equity coalition. Our goal as environmental justice advocates and community organizers working with overburdened communities is to transform NYC's waste system to be more equitable and sustainable. Relief for overburdened EJ communities should be prioritized alongside investments that bring us closer to the City's stated Zero Waste goals. Often, these goals work hand in hand, such as making investments in high-diversion, low-emission facilities like municipally-run marine transfer stations. Ultimately, we believe that waste is better handled via public infrastructure, with input from and accountability to communities who have long suffered the brunt of environmental racism.

Many of the primary challenges over the past two decades in trying to accomplish this goal have been political. From fierce NIMBY-ism in wealthier, whiter communities, to the influence of the commercial waste industry in local political machines, environmental justice advocates have had to fight tooth and nail to push policymakers to address waste inequity. The fight to open a Marine Transfer Station on the Upper East Side of Manhattan provides a clear example of one of the challenges we've faced. The Upper East Side, a community that is nearly 90 percent white and has the highest property values in the nation, put up well-resourced and well-publicized fierce opposition to the proposed re-opening of a marine waste export facility in this neighborhood. It took nearly a decade of fighting from environmental justice communities before the City moved forward, over many of the Upper East Siders objections, to implement this crucial component of waste equity. Manhattan's first operating Marine Transfer Station is expected to come online in 2019, bringing us closer to the vision of every borough handling its own waste. Though similar challenges lie ahead, EJ communities continue to build power and momentum through organizing.

Tackling the Inequity of NYC's Waste Processing System

As advocates seeking systemic change, we know that our goals will not be accomplished overnight. We need to employ a number of strategies and incremental tactics that bring us closer to a more equitable and sustainable waste system. Particularly when the goal requires legislation as well as capital resources for new infrastructure, the battle can be a slow, grueling war of attrition. To make steady progress, we rely on four pillars of change-making: (1) grassroots organizing; (2) legislative and political advocacy; (3) communications and media campaigns; and (4) litigation.

1. Organizing

Building power in environmental justice communities is a critical aspect of making waste equity a reality. In the face of powerful, moneyed opposition – from private waste industry to the Upper East Side – low-income communities and communities of color who bear the burden of environmental racism must come together to realize their collective power and influence over key decision-makers. Through education and outreach, organizers can inform community members of the policy decisions that led to their lived experience of pollution, and of the policy levers they can use to improve conditions. Once this education and activation reaches critical mass, community members can form groups and use various tactics to influence policy.

Deep grassroots power can pressure local elected officials by simple math: the more voters that are organized, the more attention politicians pay to an issue. Using tactics such as petition drives and town halls, community leaders can show politicians that there is real public concern around an issue, and that voters are paying attention to how (and whether) the elected officials will act.

A case study of community members building power comes from the South Bronx. One of the most environmentally overburdened communities in the city, Hunts Point has a long, rich tradition of grassroots environmental justice organizing, led by long-time community members and organizers from three founding members of the New York City Environmental Justice Alliance (NYC-EJA): THE POINT CDC, We Stay/Nos Quedamos, and Youth Ministries for Peace and Justice.

When lawmakers introduced an important piece of legislation that would help cut the permitted waste capacity of facilities in the South Bronx, these leaders called on their local Councilmember to sign on in support. However, due to the powerful influence of waste companies in the political arena, the Councilmember refused to put his name on the bill, and convinced the rest of the Bronx

delegation of Councilmembers to do the same.



After exhausting other tactics, including phone banking and petition drives, the community escalated pressure with a 50+ person protest outside the Councilmember's office. The protest was just weeks before Christmas, so protesters sported Santa hats, created signs that called the Councilmember a Grinch, and created a

“naughty list” calling out all the Councilmembers who refused to support waste equity. Just weeks later, the Councilmember conceded to community pressure and agreed to negotiate on the bill. This is just one example of how building community power can help keep momentum for political change moving forward.

2. Legislative and Political Advocacy

Legislation is another critical tool to reforming the waste system. The 2006 SWMP directed the City Council to pass legislation reducing the amount of waste processed in overburdened communities. This was envisioned to occur as the City began to send all municipal and residential waste to the new, more equitably-sited and more sustainable marine transfer stations. The first iteration of waste equity legislation was introduced 5 years after the SWMP was approved, in 2011 by North Brooklyn Council Member Diana Reyna, whose district processed—and still processes – approximately 40% of the City’s waste. Three years later, her successor, Council Member Antonio Reynoso, re-introduced the waste equity legislation. After facing intense political opposition, four years later, Council Member Reynoso re-introduced the legislation yet again, as Intro 157 of 2018.

Over its many iterations, the waste equity legislation has been modified from reducing actual throughput in the overburdened communities to reducing the permitted capacity at facilities in an overburdened district. In practice, this means that in some of the overburdened districts, the actual amount of waste and truck trips will not be reduced but rather the district will be protected from any increases in the amount of waste and trucks going forward. It is not an ideal bill, but it does still bring relief to at least one district in which throughput will be cut, and it incentivizes investment in expansion of organics and recycling processing as an alternative to landfill-bound waste processing.

Despite these concessions, the environmental justice community is still fighting for Intro 157 of 2018 to pass. Without the protection the bill provides, the unscrupulous private sanitation industry will continue to expand operations and exploit these communities. In addition, Intro 157 of 2018 would forbid any district in the City from processing more than 10% of the City’s waste moving forward, protecting districts just below this threshold such as Sunset Park, Brooklyn.

As of the writing of this chapter, the bill is pending in the City Council and advocates and community members remain hopeful that it will pass during the summer of 2018.

The waste equity bill is a first step to reforming the commercial waste industry more broadly, which our waste equity coalition believes will happen through imminent reforms New York City has embraced in the form of a zoned commercial waste system. Our waste equity coalition members are all members of another coalition, called Transform Don’t Trash NYC, that is advocating to ensure that the zoned waste system the City is designing advances our equity goals. Through participation in efforts to advance the waste equity bill and shape bigger industry reforms, our coalition ensures that we are attacking the disproportionate impacts the current waste system has on EJ communities from every possible policy solution angle.

3. Communications and media

Another strategy we use to advance waste equity goals is communications and media, which can help shape public opinion and influence decision-makers. Our coalition has worked to uplift impor-

tant messages and research to support the case for waste reform. The most powerful messaging in this context has been to put a spotlight on waste haulers and facilities' shockingly unsustainable, unsafe, and illegal practices. Sadly, given the current state of the waste industry in the City, there are countless examples of poor practices; from garbage truck crashes, to exploitation of workers, to reports on abysmal recycling rates, and our coalition reveals the many ways that the waste industry is failing. The key is to then focus and uplift our proposed solutions to the rampant problems.

The investigative reporting done by Pro Publica reporter Kiera Feldman on the dangers and corruption in New York City's waste industry is a good recent example of how communications and media strategies help to advance our fight for waste equity. Ms. Feldman first contacted one of our coalition partners, a labor organization, as part of her background work for a piece on the private sanitation industry; she asked the union for help accessing and interviewing workers in the industry. Through conversations with many key organizers and workers in the industry, she uncovered the awful working conditions, inefficiencies, illegal practices, and vast corruption that still remains in the private sanitation industry in New York City. She published a series of powerful articles that pushed the conversation around the City's waste industry into the mainstream and forced policy makers to pay attention at the same time the waste equity legislation was moving forward. The press attention is a crucial piece in galvanizing community members and urging policymakers to address the problems.

Another example of combining organizing tactics with a media strategy is our partnership with faith leaders in Southeast Queens, one of the most waste burdened neighborhoods in the city who would stand to benefit from Intro 157 of 2018. To educate and galvanize the community around the issue and raise its visibility to decision-makers, we helped organize a Toxic Tour and Pray-In outside of Royal Waste Services, one of the most notorious bad actors in the industry. By bringing together faith leaders, waste workers, environmental justice leaders, and elected officials, we were able to grab the attention of local press – and even the Mayor, who soon after publicly announced his support of the waste equity bill. We also used social media to amplify our message using videos, memes, and other messaging.

4. Litigation

The final pillar of systemic change comes by partnering with community lawyers to sue where appropriate. A lawsuit on behalf of one community group to counter the negative impacts of the disproportionate amount of waste coming to their neighborhood can draw attention to the human cost of the waste equity problem in the City, through press attention to the lawsuit, and can support organizing efforts, by focusing and galvanizing a group for a fight.

NYLPI's longstanding work on waste issues led us to connect with a community-based organization, Cleanup North Brooklyn, founded in the neighborhood of Bushwick/East Williamsburg. Cleanup North Brooklyn is made of families, artists and small business owners who came together to fight a poorly managed private waste transfer station in the middle of their neighborhood that causes rotting garbage odors, excessive noise throughout the night, idling trucks with harmful fumes exacerbating asthma, and a proliferation of rats. The community group reached out to NYLPI's environmental justice team for legal assistance in fall 2016, when they published a report documenting over a thousand instances of misconduct by the transfer station in the course of one

week. The report was the result of grassroots organizing by the community group, and made for an ideal circumstance for community lawyers to join the fight.

After the report's publication, the NYLPI team guided Cleanup North Brooklyn through a City-mediated meeting with the facility's owners and operators, where the community members presented their top concerns and requests to improve operations, and the facility's managers made specific commitments. NYLPI confirmed such commitments in writing following the meeting in a letter from the community to the facility.

Months later, no significant improvements had been made by the facility, and the community received no response to the post-meeting letter. On August 30, 2017, represented by NYLPI attorneys, and pro bono co-counsel, Cleanup North Brooklyn and nine individual members of the group filed a lawsuit in Kings County Supreme Court alleging that the waste transfer station is causing a public and private nuisance.

“Our community has been suffering for too long due to the poor practices of this privately-owned waste transfer station,” said Jen Chantrtanapichate, President of Cleanup North Brooklyn. “The station has caused many longstanding residents to feel helpless in confronting the never-ending issues affecting our lives and well-being. This lawsuit has the potential to lead to an overall healthier quality of life and safer streets.”

The lawsuit seeks a court order requiring the transfer station's owners to stop creating harmful conditions at their garbage facility. The case is still pending in Kings County Supreme Court, but community members feel more empowered in a fight that they know other EJ communities are watching—because not only does this fight aid in North Brooklyn's fight for waste equity, but it also gives hope that the other overburdened communities could likewise avail themselves of legal tools as well.

Outcome, Takeaways and Next Steps

Our efforts to advance an equitable, sustainable waste industry has shown the power of coalitional organizing. By bringing together environmental justice leaders, community members, labor unions, advocates and lawyers, our group employs various strategies that work together to overhaul the current system. Each interest group brings its specific strengths: the ground-level perspective and grassroots power of EJ communities; the worker perspective and institutional power of unions; the science-based authority of the environmental movement; and the legal and political expertise of attorneys and advocates. Having these multiple perspectives can help strengthen our communications, and can help bridge relationships with elected officials. It also provides us with a broader toolkit to attack a problem in a number of ways, which, as is evidenced in the fight for waste equity, is often necessary more effective.

Moving forward, we will continue to work in coalition, and identify the numerous pathways to improving the waste system in NYC. Waste equity legislation is just the latest in a long line of battles. In order to achieve a truly equitable and zero waste system, we must continue to be nimble in the face of political backlash, find opportunities to advance our goals, and be resilient under continued environmental oppression.

Conclusion & Recommendations

When working with communities, it is critical for experts and advocates who do not share the lived experience of low-income people and people of color to abide by the Jemez Principles for Democratic Organizing. These principles include: 1) Be Inclusive, 2) Emphasize Bottom-up Organizing, 3) Let People Speak for Themselves, 4) Work Together in Mutuality and Solidarity, 5) Build Just Relationships Among Ourselves, and 6) Commit to Self-Transformation. When working with disadvantaged communities, the tendency of many advocates is to value their own expertise over lived experience and local knowledge. While the skillsets of lawyers, scientists, and policy experts are critical to advancing change, these experts must be mindful, and should take the lead from the grassroots to truly fight for environmental justice.

Additionally, it is important to recognize the equal value of all pillars of systemic change, and understand that no change will be achievable without utilizing all of the strategies in tandem.

Since the initial drafting of this chapter, after decades of fighting by the Environmental Justice movement, the New York City Council passed Intro 157-c, the Waste Equity Bill, on July 18th, 2018, and was signed into law by Mayor de Blasio in August. While the Waste Equity law does not fully solve systemic problem of environmental racism in New York City's solid waste system, it does represent the first real step towards environmental justice for overburdened communities and is a hard-fought and significant victory for community members and advocates alike. With this win, we hope that our coalition has the momentum to push for the systemic reforms that our city desperately needs.”



The West Calumet Complex

Public Housing, Environmental Health, and Racism: The West Calumet Story

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Introduction

The story of the West Calumet Housing Complex in East Chicago, Indiana is not easily told. It is an environmental health crisis unfolding in slow motion. Though the Shriver Center's involvement did not begin until 2016, it was a decision made more than 50 years ago that impacted the lives of thousands of families. This crisis was also set within a larger government sanctioned framework of where public housing was sited in this country.

History of the West Calumet Housing Complex

The West Calumet Public Housing Complex was constructed on the former site of an Anaconda Copper Company lead refinery and an Eagle-Picher Company white lead plant, and across the street from a U.S. Smelter and Lead Refinery facility (“U.S.S. Lead”).¹ U.S.S. Lead was still in operation at the time the West Calumet Complex was constructed, and was later converted into a secondary lead smelter.² In 1966, then East Chicago Housing Authority (“ECHA”) Executive Director Benjamin Lesniak stated that there were limited siting options for public housing in East Chicago and as a result developments would either require the demolition of current buildings or be placed “in vacant areas surrounded by industries, and undesirable residential areas.”³ Lesniak also stated that the majority of tenants would be African-American and Latino and that the ECHA would



Akeesha Daniels, a community activist, lifelong resident of East Chicago, and one of the Complainants in the Calumet Lives Matter v. ECHA complaint.

build public housing in areas that are predominately African-American and Latinx a position consistent with the federal government’s directives of placing public housing sites for racial and ethnic minorities in majority minority communities.⁴ In 1970, the ECHA received a \$13.4 million grant from HUD to build the Complex.

For over forty years, families resided at the West Calumet Complex without knowing that the soil they were living on was highly contaminated with lead and arsenic. Countless children and their families were exposed to these health harming toxins. In 1985, at least 53 children at West Calumet were lead poisoned. At that time, U.S.S. Lead was still in operation and the EPA’s tests found that emissions were eight times higher than the EPA’s allowable admissions standards.⁵ By the 1990s, 40% of the children tested at West Calumet had elevated blood lead levels.⁶ No efforts were taken to protect children at the site or even to fully inform or notify current and future residents of the risks, despite receipt of federal housing dollars in 1996 for modernization at the site.⁷ Minimal, if any, precautions were taken during renovation and new construction within the site, which included building a new elementary school – with a vegetable garden – and constructing new playgrounds and adding ramps and landscaping to the West Calumet Housing Complex.

1 U.S. Environmental Protection Agency, *West Calumet Housing Complex – East Chicago, Ind.*, EPA (May 1, 2018), <https://www.epa.gov/uss-lead-superfund-site/west-calumet-housing-complex-east-chicago-ind>.

2 *For New 346 Unit Housing Project East Chicago Gets \$13.4 Million*, CHI. DAILY DEFENDER, Apr. 11, 1970, at 18.

3 *Public Housing Sites Are Scarce*, CHI. TRIB., Oct. 6, 1966, at 1, <https://perma.cc/HJW8-37SQ>.

4 *Id.*

5 U.S. ENVTL. PROTECTION AGENCY, EPA TO BEGIN TESTING FOR LEAD CONTAMINATION IN YARDS (Dec. 2009), Superfund Records Collections Collection ID: 62604, Doc. 424396, *available at* <https://semspub.epa.gov/src/document/05/424396>.

6 U.S. DEP’T OF HEALTH AND HUMAN SERVICES, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, PUBLIC HEALTH ASSESSMENT FOR U.S. SMELTER AND LEAD REFINERY, INC. (USS LEAD) EAST CHICAGO, INDIANA, EPA FACILITY ID IND047030226 (Jan. 29, 2010), *available at* <https://semspub.epa.gov/src/document/05/424408>.

7 Steve Patterson, *Grant to Improve Housing*, POST-TRIBUNE, Sept. 23, 1997, at B1.



The infamous sign at the West Calumet Complex telling residents to not play in the dirt.

In 2009, the Calumet Neighborhood of East Chicago was added to the National Priorities List and declared a Superfund site.⁸ Yet again, West Calumet residents and applicants received no direct information about the Complex being in Zone 1 of the Superfund site. Thereafter, the EPA held meetings with the City and ECHA regarding soil testing and to begin to remove soil from some yards within the Superfund site, again, without any direct notice to the residents. In 2014, the EPA, Department of Justice, the State of Indiana, and the corporations responsible for the contamination entered into a consent decree describing the testing and remediation planned for the site.

In 2016, after decades of environmental contamination and neglect by polluting corporations, the state, and federal authorities, the Environmental Protection Agency ("EPA") reported to the City of East Chicago that it found lead levels in the soil as high as 91,100 parts per million – which is 228 times the EPA's maximum permitted lead level. Two months later, the City of East Chicago sent a letter to the West Calumet Public Housing Complex residents telling them for the first time of the contamination and informing them that they would need to relocate immediately.

8 U.S. ENVTL. PROTECTION AGENCY, *supra* note 5.

Relocation of West Calumet Families After Decades of Poisoning

In the weeks that followed, a relocation process began that can be described as nothing short of chaotic. Some residents panicked and moved immediately to uninhabitable housing, while other residents who had recently left to prevent their children from being lead poisoned were told they were ineligible for relocation assistance. Most residents were stuck at the Complex without any clear information as to the future of their housing and their community. Residents were also experiencing the trauma of learning for the first time that their children were exposed to lead and may permanently suffer from the effect of that exposure. Residents came to the Shriver Center seeking information about their housing rights.

Other than the Mayor of East Chicago's letter notifying residents of the impending relocation and the site's closure, the City and the ECHA initially provided no concrete information on the relocation process or the rights of residents. In fact, the ECHA had no written relocation plan at the time the closure and relocation were announced, and residents who had recently left due to lead contamination were ineligible for vouchers. As a result, the relocation process virtually guaranteed that families would face terrible housing outcomes, including homelessness, loss of housing subsidy, residential segregation, and continued harm to their health caused by the location and condition of their future homes. The relocation process also threatened residents' support networks that could help minimize the long-term effects of lead poisoning. Contrary to what was happening on the ground, the ECHA was bound by federal law to provide Housing Choice Vouchers to all eligible households, comprehensive relocation assistance, and meaningful support in helping families make moves to healthier communities.⁹

Advocacy Strategies

At the request of a collective of current and former residents and a community organization, the Shriver Center filed a Housing Discrimination Complaint with HUD's Office of Fair Housing and Equal Opportunity alleging that the actions and omissions by the ECHA violated residents' civil rights.¹⁰ Residents were concerned that without a comprehensive relocation process and sufficient time to move, they would be forced to relocate within the Superfund site or other contaminated parts of Northwest Indiana, one of the most heavily industrialized and contaminated regions in the United States. Our clients included Calumet Lives Matter, a community based organization created to respond to the lead contamination in the Calumet neighborhood, one lifelong resident of East Chicago, IN who had raised three children within the Superfund site, three mothers who had recently moved to East Chicago from Chicago, IL with their young children expecting a safe and quiet place to raise their kids, a single woman with a disability struggling to find accessible housing near her support networks, and a mother who had recently left the West Calumet Complex after a second child of hers was diagnosed with an elevated blood lead level at the site and who was told by the ECHA that she must have caused the lead exposure.

9 United States Housing Act, 42 U.S.C. § 1437p (1998); 24 C.F.R. pt. 970; 24 C.F.R. § 971.21; Notice PIH 2012-7.

10 Complaint, *O'Berry v. E. Chi. Housing Auth.*, No. 4847-0339-6110, v. 1 (Aug. 29, 2016), available at <http://poverty-law.org/files/advocacy/housing/oberry-complaint.pdf>.

After three months of negotiation with the ECHA, the City of East Chicago, and HUD, our clients entered into a Voluntary Compliance Agreement (“VCA”) with ECHA. The agreement provided residents with comprehensive relocation services, expanded the timeline for residents to move, provided residents a rent abatement so they did not have to pay rent to live on toxic land, guaranteed risk assessments in the new housing for families whose children had been diagnosed with an elevated lead level to prevent re-exposure, and extended relocation benefits to families who had recently left the Complex previously due to lead poisoning.¹¹ We then worked for the next seven months to implement the terms of the VCA as residents relocated from the site.

HUD’s Regulations Failed to Protect Children from Lead Exposure

During the same timeframe as West Calumet residents were being relocated, we were working on a national scale to ensure that HUD updated its lead poisoning prevention rules. Far too often, children living in federally assisted housing are exposed to lead, which can permanently alter their development.¹² Lead poisoning is usually caused not only by soil contamination but by uncontrolled lead-based paint, but it can also be caused by contaminated soil, eroding lead pipes, and other household consumer goods. Lead poisoning causes irreversible neurological damage and there is consensus in the scientific community that no amount of lead in the blood is safe.¹³ Lead poisoning even at low levels causes permanent brain damage, diminished intellectual abilities, behavioral health issues, developmental delay, and premature death. The cumulative exposure to lead, over time and multiple pathways of exposure, is especially harmful.

In 2016, HUD’s regulations allowed children living in federally assisted housing to have elevated blood lead levels that were four times the Centers for Disease Control and Prevention (“CDC”) intervention level before housing providers were required to intervene. HUD needed to update its regulations to conform with the CDC’s intervention level and importantly, to focus its efforts on preventing children in federally assisted housing from being exposed to lead. Before the East Chicago crisis became known to residents, we worked with Loyola University Chicago School of Law’s Health Justice Project and over thirty national advocacy organizations and experts to submit a Petition for Rulemaking to HUD, requesting that they update their regulations to conform with the CDC’s intervention level and to otherwise engage in primary prevention strategies to prevent

11 U.S. DEPT. OF HOUSING & URBAN DEV., TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND SECTION 504 OF THE REHABILITATION ACT, PRELIMINARY VOLUNTARY COMPLIANCE AGREEMENT AND TITLE VIII CONCILIATION AGREEMENT BETWEEN THE U.S. DEPT. OF HOUSING & URBAN DEV. AND CALUMET LIVES MATTER (No. 05-16-5210-8/6, Nov. 2, 2016), available at https://www.hud.gov/sites/documents/ECHA_11032016.PDF.

12 See, e.g., Emily A. Benfer, *Contaminated Childhood: How the United States Failed to Prevent the Chronic Lead Poisoning of Low-Income Children and Communities of Color*, 41 HARV. ENVTL. L. REV. 493, 508 (2017).

13 See, e.g., CTRS. FOR DISEASE CONTROL & PREVENTION, RESPONSE TO ADVISORY COMMITTEE ON CHILDHOOD LEAD POISONING PREVENTION RECOMMENDATIONS IN “LOW LEVEL LEAD EXPOSURE HARMS CHILDREN: A RENEWED CALL OF PRIMARY PREVENTION” (June 7, 2012), available at http://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf (“Since no safe blood lead level in children has been identified, a blood lead “level of concern” cannot be used to define individuals in need of intervention.”).

children from being exposed to lead.¹⁴ In 2017, as West Calumet families were relocating, HUD promulgated updated regulations that aligned with the CDC's definition of lead poisoning and we submitted comments urging a move to primary prevention techniques to ensure lead is identified in all types of federally assisted housing prior to a child moving in and being exposed.¹⁵ To further push the need for primary prevention, we worked with advocates to introduce the Lead Safe Housing for Kids Act, which currently has bipartisan support in both the House and the Senate.¹⁶

Additional Legal Advocacy to Support the East Chicago Community

In order to support the East Chicago community, it was critical that there be a legal team with expertise in environmental law, housing law, and health law and with the ability to meet the needs of both the West Calumet residents as well as the other tenants and homeowners who lived within the Superfund site. Northwestern University Pritzker School of Law's Environmental Advocacy Center and University of Chicago Law School's Abrams Environmental Law Clinic have expertise representing residents in Superfund sites and other toxic sites. Loyola University Chicago School of Law's Health Justice Project had expertise in lead exposure and the social determinants of health, and the National Health Law Program had expertise in health law. Indiana Legal Services is the civil legal services agency serving low-income residents of Indiana. Our team regularly coordinated to ensure that the residents of West Calumet, and the surrounding community, all received legal support throughout this Crisis.

There was plenty of legal work to be done to get this community justice. Northwestern and University of Chicago, with pro bono support from the private law firm Goldberg Kohn, sought to intervene in the EPA's Superfund litigation in partnership with many members of the community.¹⁷ Although their motion was ultimately denied on timeliness grounds, that effort ensured that the community could hold the EPA, responsible parties, and other government entities accountable and increase their transparency throughout the cleanup process. The legal team also worked with the Health Justice Project – a key partner in the petition for rulemaking to HUD – and the National Health Law Program to ensure the state was properly responding to residents' healthcare needs. Indiana Legal Services created a Lead Safe Legal Project to assist with families' individual legal services needs such as special education, housing conditions, and healthcare needs. Natural Resources Defense Council joined the legal team when it was discovered that not only was the

14 Letter from Emily A. Benfer, Clinical Professor of Law & Director, Health Justice Project (Loyola University of Chicago School of Law) & Kate Walz, Director, Housing Justice (Sargent Shriver National Center on Poverty Law), to Julian Castro, Secretary Dept. of Housing & Urban Dev. (Feb. 11, 2016), *available at* <http://www.childrensdefense.org/library/data/petition-for-rulemaking-24.pdf>.

15 Letter from Lee Francis, MD, MPH, President and CEO, Erie Family Health Center, et al., to Regs. Division, Office of General Counsel, Dept. of Housing & Urban Dev. (Oct. 31, 2016), *available at* <http://nhlp.org/files/Erie%20Family%20Health%20Center.Health%20Justice%20Project.National%20Housing%20Law%20ProjectComments.pdf>.

16 Lead-Safe Housing for Kids Act of 2017, S. 1845, 115th Congress (2017); Lead-Safe Housing for Kids Act of 2018, H.R. 6252, 115th Congress (2018).

17 See *United States v. Atl. Richfield Co.*, No. 2:14-CV-312-PPS-PRC, 2017 U.S. Dist. LEXIS 67090 (N.D. Ind. May 2, 2017), *aff'd*, 324 F.R.D. 187 (N.D. Ind. 2018) (denying Applicants' Motion to Intervene (filed Nov. 1, 2016)).

Calumet neighborhood facing a lead crisis in the soil, the City of East Chicago was failing to follow safe drinking water regulations. In partnership with many community groups and other members of the legal team, NRDC and Northwestern submitted a Petition for Emergency Action under the Safe Drinking Water Act.¹⁸

As West Calumet residents were relocating and thereafter, we worked closely with the community groups and resident leaders to ensure their housing rights were protected. When the last of the remaining families were given notice that they had to move to an emergency transfer unit – for many families to a unit over state lines in Chicago, IL, where many tenants had no connections – we coordinated legal support with the help of Indiana Legal Services and pro bono counsel at Goldberg Kohn to block the moves the families did not want to make across state lines.

Once the Complex was fully vacated, ECHA sought approval to demolish the site. The initial demolition plan included the complete removal of not only the building structures but also the underground utilities. This plan would have impacted the groundwater and further contaminated the city for decades to come – an issue our environmental justice colleagues recognized immediately. There were also no controls on how dust would be controlled during demolition, threatening the health of nearby residents and threatening to re-contaminate land that had already been cleaned by the EPA. There was also no mechanism for actual, individualized notice to nearby residents about when demolition activities would significantly impact their health. With the support of our environmental justice colleagues and community partners, the legal team worked with the community to submit comments to HUD demanding that they change the scope of demolition work to ensure that East Chicago residents' health was prioritized.

Most importantly, we provided technical assistance to the community organizations, navigating the complex funding and statutory framework to achieve their goals of protecting the health of their community. With our technical support, the community organizations obtained a Declaration of Emergency from the City of East Chicago and the State of Indiana to release federal and state resources to respond to the lead crisis in the City. Community members and their organizers also met with HUD Secretary Ben Carson and former EPA Secretary Scott Pruitt to demand continued attention and support for the Calumet community.

Advice for Advocates Working on Similar Issues

The racist history of the siting of public and other federally assisted housing in segregated neighborhoods – in areas with increased environmental hazards – is unfortunately not unique to East Chicago, IN. The federal government has played a key role in ensuring that low-income housing was built in segregated areas and near toxic land. In fact, after the news about the lead crisis in East Chicago broke, the EPA and HUD created a Memorandum of Understanding to share information across agencies and their initial report disclosed that 70% of Superfund sites are located

18 Natural Resources Defense Council, *Groups Petition EPA for Emergency Response to East Chicago, IN Drinking Water Contamination*, NRDC (Mar. 2, 2017), <https://www.nrdc.org/media/2017/170302>.

within one mile of a public housing or HUD Multifamily housing complex.¹⁹ In depth analysis and attention to the environmental health implications of this proximity are imperative to helping advocates navigate the best response to this issue.

The initial response to the crisis in East Chicago, IN, however, should never be replicated. A comprehensive, community driven plan for how to address those hazards is essential to remedying this harm. Advocates play a key role in ensuring that communities have access to the resources – including the legal resources and scientific expertise – to demand environmental justice for their communities and improved health for themselves and future generations. The response to an environmental disaster like East Chicago, IN must be driven by directly impacted residents.

It is vital for advocates to remember that directly impacted communities need to have the ultimate decision about the future of their homes and communities. In East Chicago, residents came to us seeking relocation assistance that would support them in finding alternative housing. Some residents – especially those who had grown up in the community and have deep ties and support systems in place there – did stay in the immediate area and continue to fight to ensure what happened to their community doesn't happen anywhere else. They likewise continue to fight to ensure that proper cleanup occurs and seek to put safeguards in place to ensure that future generations are not poisoned. Many other families who did want to leave East Chicago sought additional time to be able to move, a request that made many government officials balk. Families know exactly what is best for them, and it is our job as advocates to support them and ensure they have the resources and opportunity to do what's right for them under the circumstances.

Working on a legal team with advocates with a variety of specialties is critical to ensuring that residents' rights are fully protected and ensuring that families can make fully informed decisions. Without our partners' expertise in environmental law and health law, we as housing advocates would have missed critical opportunities to obtain justice for the community and prevent future health harms.

19 Memorandum of Understanding Between the U.S. Dept. of Housing & Urban Dev. and the U.S. Env'tl. Protection Agency Regarding Improving Communication About Certain Public and HUD-Assisted Multifamily Housing Near Superfund Sites (Jan. 11, 2017), *available at* <https://www.hudexchange.info/resources/documents/Memorandum-of-Understanding-between-HUD-and-EPA-Regarding-Improving-Communication-About-Certain-Public-and-HUD-Assisted-Multifamily-Housing-Near-Superfund-Sites.pdf>; see also Sylvia Carignan, *Majority of Superfund Sites Near Low-Income Housing*, Bureau of Nat'l Affairs, Inc. (May 9, 2017), <https://www.bna.com/majority-superfund-sites-n73014450645/>.



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Advocating for Environmental Justice in Our Schools

Christine N. Appah

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“It is uncontradicted that the inequalities heaped upon infant plaintiffs herein are numerous and burdensome. They are interrelated with one another and are all an inextricable and inevitable part of a segregated school system – inferior physical facilities, psychological road blocks to learning, warped development, deprivation of playtime, cold lunches, unnecessarily complicated adolescent development, etc. — these are but some of the harms of which plaintiffs complain.”

Complaint at 26, *Brown v. Board of Educ. of Topeka*,
98 F. Supp. 747 (D. Kan.) July 23, 1951.

“Plaintiffs face unsafe and unsanitary physical conditions that make learning nearly impossible. Overcrowding, failure to regulate temperature, dangerous or missing equipment, pervasive rodents, and other conditions described here mean that sustained, consistent instruction of the sort necessary to lay a foundation for and build up literacy through the years simply cannot occur in Plaintiff’s schools. The City of Detroit admitted that during the 2015-2016 academic year, *none* of the school district’s buildings were in compliance with city health and safety codes.”

Complaint at 29, *Gary B. v. Snyder*, 2016 WL 4775474 (E.D.Mich.)
Trial Pleading at 29 September 13, 2016.

INTRODUCTION

The right to an adequate education has been at the center of civil rights advocacy for decades. The above quotes come from the plaintiff’s complaints in *Brown v. Board of Ed. of Topeka, Kansas* and *Gary B. v. Snyder*, respectively. These landmark cases were filed sixty-five years apart. While the nation has made some progress in resolving the disparities in our educational system, environmental poverty is still a key driver of educational inequality. In classrooms across the United States, conditions like mold, poor ventilation, chemical contaminants in building materials and proximity to sources of pollution are acute problems that create serious environmental health concerns and harm the quality of education.

Background

Formal education is an essential part of a child’s healthy growth and development, yet many children across the United States still struggle to obtain access to adequate educational opportunities. Public school education is governed by states and municipalities and funding conditions for schools can vary widely. The quality of the environment where children attend school can have a serious effect on children’s health, thinking, and ability to learn.¹

Here, environmental poverty is defined as the substantial lack of access to healthy and structurally safe homes, neighborhoods and educational facilities. Concepts of place based advocacy have brought renewed attention to schools as the anchors and resources for their communities.² Viewing the school as an integral part of the community places environmental health in schools as a central part of environmental justice advocacy. Environmental poverty, coupled with other socioeconomic factors can have far reaching impacts on a child’s academic performance. Environmental justice advocates work to protect and preserve communities in the face of inequitable distribution of environmental burdens.

1 Ma, Annie, [Run-down buildings, struggling schools: how crumbling facilities affect student performance](https://www.chalkbeat.org/posts/ny/2016/07/25/run-down-buildings-struggling-schools-how-crumbing-schools-affect-students/m), <https://www.chalkbeat.org/posts/ny/2016/07/25/run-down-buildings-struggling-schools-how-crumbing-schools-affect-students/m>, July 25, 2016

2 [The Role of Community Schools In Place-Based Initiatives: Collaborating for Student Success](https://bit.ly/1i4xRh3), <https://bit.ly/1i4xRh3>, June 2013

This chapter discusses the advocacy strategies that have been used to shed light and spark change on issues related to environmental health in schools. The topic is of critical importance because, unlike many other parenting choices, school is mandatory. Children are required to be in school for a set number of hours per day per school year. Where your child spends those hours must be a healthy and safe environment.

Healthy schools are also a workers' rights issue. Schools are also a major employer in the United States, with an estimated 3.2 million full time equivalent teachers.³ Nationally, teachers and education workers have launched campaigns demanding fair treatment and healthier working environments. Last year's nationwide teacher walkouts were prompted by the urgent need to address disinvestment in education, including low teacher pay and deteriorating school facilities.

Lack of resources to fund the necessary capital projects to add seats and keep school buildings in healthy condition is even more acute in areas where people of color and families with lower incomes reside.⁴ Studies have found that there are substantial disparities in the quality of the educational facilities in these communities.

This chapter will focus on three major issues in school environmental health: the safe siting of schools, access to clean drinking water and finally, the detection and removal of toxins in school buildings. While there are certainly other environmental health issues in schools, these examples highlight practical advocacy techniques that have proven successful in navigating issues that are unfortunately faced by many school districts around the country.

School Siting

Communities with lower incomes and communities of color are often both in greatest need of additional schools as well as more likely to have environmentally contaminated sites.⁵ These communities are also less likely to have full information about proposed school sites and environmental remediation needs. Studies have shown that children from communities of color and lower income communities are more likely to attend schools that are sited near environmentally hazardous facilities, like busy highways, that cause poor air quality.⁶ One study found that "students of color are disproportionately located in schools with higher respiratory hazard ratios, raising flags for policy makers and advocates."⁷ Poorly sited schools can even have a detrimental effect on children's academic performance.⁸ Another study, which analyzed schools in Michigan by comparing data on air

3 Ibid.

4 Pastor, et. al, Breathless: Schools, Air Toxics, and Environmental Justice in California, <https://escholarship.org/content/qt3bd646dd/qt3bd646dd.pdf>, January 2005

5 <https://www.wnyc.org/story/many-poor-schools-new-jersey-are-overcrowded/>

6 See Fischbach S., Not in my schoolyard: avoiding environmental hazards at school through improved school site selection policies ,Rhode Island Legal Services, 2006 Mar, [https://www.nylpi.org/wp-content/uploads/bsk-pdf-manager/49_EJ - NOT IN MY SCHOOLYARD - IMPROVING SITE SELECTION PROCESS.PDF](https://www.nylpi.org/wp-content/uploads/bsk-pdf-manager/49_EJ_-_NOT_IN_MY_SCHOOLYARD_-_IMPROVING_SITE_SELECTION_PROCESS.PDF), last visited August 6, 2018

7 Pastor Jr., Manuel et. al, (2005). Breathless: Schools, Air Toxics, and Environmental Justice in California, (CJTC Working Paper 05-1 January 2005) Retrieved from the Center for Justice, Tolerance and Community site: https://cjtc.ucsc.edu/docs/Breathless_03_with_figures_unlinked.pdf

8 Ibid.

pollution with academic performance, found a positive correlation between a schools' proximity to polluted air quality and lower test scores.⁹ A 2002 study by the Child Proofing Our Communities Campaign in revealed that many school siting regulations lack protections or restrictions against siting schools near toxic sites.¹⁰

School siting in New York City is particularly challenging. In its recently released report, "Planning to Learn" the City Council of New York discusses school overcrowding and notes that "[r]eal estate experts have indicated that there are very few large sites left without some level of contamination, including but not limited to semi-volatile organic compounds and heavy metals."¹¹ The City Council report also notes that the School Construction Authority (SCA) has not made clear what threshold levels of these contaminants the city is willing to work with. Sometimes, school communities only become aware of their proximity to toxins when their exposure manifests in adverse health symptoms.

New York Lawyers for the Public Interest (NYLPI) represented the Bronx Committee for Toxic Free Schools in its lawsuit against the SCA which challenged a plan to build a school on a highly contaminated site that had been formerly used as a rail yard. The site was contaminated with tetrachloroethylene (TCE), mercury and benzene and required a comprehensive remediation plan. NYLPI, along with *pro bono* counsel from Weil, Gotschal and Manges, LLP, challenged the City's action on the grounds that the City failed to disclose its plans for long term monitoring for the site as required by the State Environmental Quality Review Act (SEQRA). The Bronx Committee for Toxic Free Schools ultimately prevailed in a decision by the New York State Court of Appeals, which required the SCA followed the procedures required under the State Environmental Quality Review Act (SEQRA). SEQRA mandates the drafting of an environmental impact statement whenever some agency actions may have a substantial effect on the local environment. Statutes like SEQRA can be helpful for communities seeking to ensure that land use plans for schools have followed all of the procedures required to ensure a safe learning environment, including adequate remedial measures. See Matter of Bronx Committee for Toxic Free Schools v. School Construction Authority, 20 N.Y.3d 148 (2012).

Lead in School Water

Children are particularly susceptible to the health effects of consuming lead, a neurotoxin that can be ingested through water, dust, peeling paint, soil and other materials. Lead exposure can affect a child's physical and cognitive development. Lead poisoning can affect muscular-skeletal development, reduce attention span, inhibit learning processes, and impact the sensory organs. Testing water for lead is essential step to prevent lead poisoning in children.

9 Moahi, P., et.al, (2011). Air pollution around schools is linked to poorer student health and academic performance, <https://www.ncbi.nlm.nih.gov/pubmed/21543420>

10 Pianin, E. and Fletcher, M. (2002). "Many Schools Built Near Toxic Sites, Study Finds." Washington Post. Retrieved from https://www.washingtonpost.com/archive/politics/2002/01/21/many-schools-built-near-toxic-sites-study-finds/5c76f67d-bf5f-4fa9-b0a4-39406f477abb/?utm_term=.074462137b98

11 New York City Council (2018). Planning to Learn: The School Building Challenge. Retrieved from the New York City Council site: <https://council.nyc.gov/land-use/plans/schools-working-group/>

The Flint, Michigan lead contamination crisis brought about much needed discussion and action around the country – and a focus on whether lead from aging plumbing in schools was contaminating school water. In the wake of the Flint crisis, and revelations about lead contamination in water in nearby school districts like Newark, New Jersey, advocates in New York, supported by a coalition of organizations, began pushing for statewide mandated lead testing for school water. The campaign was co-lead by the Healthy Schools Network, Inc., and New York League of Conservation Voters along with support from various organizations like Clean and Healthy New York and WE ACT for Environmental Justice.

The Healthy Schools Network (HS Network) is a New York based nonprofit organization dedicated to promoting healthy school environments. Their award winning work has a national scope and incorporates research with public policy advocacy and development. HS Network advocates around three core themes: 1) environmental public health services for children at risk or with suspected exposures at school; (2) child-safe policies for housekeeping and purchasing (targeting indoor air pollutants, mercury, pesticides and other toxics, and the use of green and healthy/safer products); (3) child-safe standards for school design, construction, and siting.¹² HS Network also coordinates the Coalition for Healthier Schools, which brings together individuals and organizations dedicated to improving the environmental health of schools.

The HS Network's campaign required coordination with groups of educators, environmental justice organizations, scientific experts and legal advocacy groups across New York State. In September 2016, Governor Cuomo signed the nation's first comprehensive law requiring testing for lead in the drinking water supplies of New York state's public schools, NYS Public Health Law Section 1110 (PHL §1110). The Department of Health instituted emergency regulations to guide the process for enforcing this law. 10 NYCRR Subpart 67-4. As of September 2016, every school district in New York is required to test all drinking water in their buildings for lead contamination every five years. Any faucet or fountain that tested positive for lead above 15 µg/dL must be turned off immediately.

The regulations included standardized testing protocols, which were crucial to ensure accurate results. For example, New York City conducted a round of testing for lead in its public schools before the state law was passed. However, the City was found to be “flushing” water pipes before testing, a technique likely to artificially produce lower test results, since the highest levels are usually found in the “first draw” of water from pipes after water has remained stagnant for some time.¹³ The New York City Department of Education, along with all of the schools in the state, is now required to follow a standard protocol set by New York State.

PCBs in School Buildings

NYLPI helped to organize families around New York City whose children attended schools that had tested positive for polychlorinated biphenyls (PCBs). PCBs are a class of highly toxic neurotoxins that are known carcinogens. PCBs are very durable chemicals that do not degrade easily and

12 “Who We Are”. *Healthy Schools Network*. Retrieved from www.healthyschools.org/who_we_are.html

13 Taylor, Kate, *New York Changes How It Tests for Lead in Schools' Water, and Finds More Metal*, February 3, 2017, <https://www.nytimes.com/2017/02/03/nyregion/new-york-dept-education-lead-water.html>

permeate easily through different substances. PCBs were widely used in building materials, particularly caulk, from about 1950 until they were banned in 1978, and have a lasting legacy in many New York City schools. An investigative journalism series published by The Daily News revealed widespread PCB contamination in schools by and first reported illegal levels of PCBs in school buildings in the Bronx.

Families from schools that were tested for PCBs contacted NYLPI for community organizing and legal assistance. NYLPI helped to organize a broad based campaign that included educators, community based organizations, local politicians and scientific experts. NYLPI, along with pro bono counsel from White & Case LLP, filed a lawsuit in the Southern District of New York, on behalf of a parent, Naomi Gonzalez, whose children attend P.S. 178, an elementary school in the Bronx that tested 2,000 times the legal limit for PCBs (50 parts per million). The lawsuit alleged violations of the Toxic Substances Control Act. The Environmental Protection Agency intervened and NYLPI agreed to withdraw its case as the EPA and the DOE negotiated a consent decree. The City was ordered to undertake a pilot study to determine the sources and most effective remediation strategies for PCBs. The pilot study involved five schools, including P.S. 178 in the Bronx.

The pilot study revealed that although caulk was a source of PCBs, even higher concentrations in the air came from the aging light fixtures that were insulated with PCBs. The light fixtures had been in operation for decades and years of use caused them to deteriorate and malfunction which in turn released toxic PCBs into the air. The results prompted a new plan to focus on removing and replacing the light fixtures. The DOE and SCA planned to remove all of the fixtures within a ten year period, however, advocates and community groups pushed back on the proposed timeline and called for a faster removal. New York Communities for Change (NYCC), a community based organization that works on issues of social equity and neighborhood empowerment worked with NYLPI to organize and campaign for comprehensive and expedited removal of PCBs from New York City's school.

In 2011, NYLPI filed a lawsuit on behalf of NYCC to demand that the City reduce its proposed ten year time frame to expedite removal. NYCC prevailed and the City entered into a consent agreement and final order to replace the light fixtures in five years. Overall, light fixtures were replaced in over 883 schools for a total cost of around \$880 million. The new light fixtures were also more energy efficient, leading to continued cost savings for the DOE.

In addition to litigation, NYLPI worked with the New York City Council to pass two reporting laws that amended the New York City Charter to require the City to notify families about the discovery of PCBs in schools through written disclosures. The reporting law also requires the City to provide a detailed record of findings of PCBs in the city's school buildings.

Challenges and Strategies

Major victories for school environmental health can be attributed to team work, coalition building and community organizing. These tools have been very useful in identifying issues and creating sustainable solutions. Organizations like NYLPI have found that coalition partnering provides access to networks of concerned individuals whose experiences can help to better inform and guide our legal and policy development strategies.

The community lawyering model places the community at the forefront of the advocacy by empowering the affected to define their desired outcomes. Coalitions are a key part of our advocacy toolkit. Our organization has worked in coalitions on a variety of issues related to school environmental health. Coalition work helps to bring organizations and communities together that share common goals. Coalitions share resources and ideas to strengthen messaging around issues of critical importance and have been a successful part of the environmental justice movement in schools.

One major challenge in working to secure environmental justice for schools is the need for information, namely data related to the presence of toxic substances in buildings, test results and protocols. NYLPI has found it helpful to partner with organizations like HS Network who provide research and analysis of key topics in school environmental health as well as with unions where staff in directly impacted schools may work.

Advocates who are interested in working on environmental justice issues in schools should consider partnering with local organizations that serve school communities. Advocates should be ready to enlist the help of experts from universities and research organizations as they can help to them to develop a stronger background on some of the scientific and technical issues that are unique to schools. NYLPI has also found success in working with local and state elected officials as they have helped to heighten awareness and to develop legislation on issues that may not have ready avenues for redress.

Conclusion

Protecting the environmental health of our school communities requires a multifaceted approach. The key problems of school overcrowding, building repair and toxic exposures are complex and require legal, political, environmental and scientific expertise. NYLPI has found that the most effective approaches incorporate community insight and promote community empowerment. The legal and community organizing strategies outlined above are some of the ways that groups can become involved in the efforts to make our school environments safer and more equitable.



Environmental Injustice in Corpus Christi's Harbor Bridge Project

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Introduction

The proposed relocation of a bridge and highway into the Hillcrest and Washington Coles neighborhoods of Corpus Christi, Texas, threatened to exacerbate long-standing environmental injustice and disinvestment in those neighborhoods. Community organizing and the willingness of a federal agency to enforce the Civil Rights Act resulted in a settlement to at least partially address the history of segregation, industrial expansion, and toxic exposure in the neighborhoods.

Background and History

Hillcrest and Washington Coles are located on Corpus Christi's north side, adjacent to a ship channel, the Port of Corpus Christi, and refinery row, which is home to six refineries, other industrial facilities, and waste sites. The Washington Coles neighborhood was established in the late 1800s and was the only neighborhood in Corpus Christi where African Americans were allowed to purchase homes. In 1877, the area's first public school for African Americans opened in Coles. The Corpus Christi Housing Authority opened the DN Leathers public housing complex in Coles in 1941, with units for 122 African American families. Due to overcrowding in Coles, in 1944, the City opened up the adjacent Hillcrest neighborhood to African American residents. During the 40s and 50s, the neighborhoods had thriving schools, churches, social welfare organizations, local business, and nightlife.

Throughout the 1930s, however, due to the discovery of nearby oil, the Corpus ship channel and Port began transforming from primarily agricultural to petrochemical. By the 1950s, petroleum storage tanks and processing facilities surrounded the Hillcrest and Coles neighborhoods. Adding insult to injury, in the early 1960s the new Interstate Highway 37 was constructed through the neighborhoods, isolating Hillcrest and Coles from the rest of residential Corpus Christi. As a result of industrial encroachment and highway construction, environmental quality deteriorated, property values in the neighborhoods declined, and area businesses and schools closed. Many of those who could afford to leave did so.

Residents challenged industrial expansion permits that would allow increased pollution. The U.S. Department of Justice brought Clean Air Act criminal enforcement actions against area refineries. Lawsuits and permit challenges led to some buyouts that allowed some residents of Hillcrest and other communities along the ship channel to move to safer areas. But the petrochemical industry continued its expansion, recently accelerated by oil and gas production from the nearby Eagle Ford Shale formation.

Then in 2011, the Texas Department of Transportation restarted the environmental review process for a new Harbor Bridge. The existing bridge spanned the ship channel and forced ships and barges to pass under it to reach Port facilities. With the expansion of the Panama Canal, the Port wanted a higher bridge to allow bigger ships to access port facilities. In addition, the existing metal Harbor Bridge was expensive to maintain and had design safety issues.

The Draft Environmental Impact Statement for the Harbor Bridge Project recommended (as the preferred alternative) the construction of a new 538 foot tall bridge and connecting highways through the middle of the Hillcrest and Coles neighborhoods. The Feasibility Study for the project stated that the preferred route, the red alternative, "would serve as a barrier between the newly developed Northside people-oriented area and the Port and industrial facilities located to the west of the red alternative." This of course, ignored the 400 families living in Hillcrest to the west of the red alternative.

The proposed Harbor Bridge would run an elevated highway through the neighborhoods, further isolate Hillcrest from the rest of the city, and increase toxic air emissions. The proposal galvanized the community to fight for their health, quality of life, and civil rights.

Challenges in Corpus Christi

The challenges in Corpus Christi are those shared by many EJ communities.

Environmental injustice can often be traced to overt segregation. In Corpus Christi, as in many places throughout the country, environmental injustice has roots in mandatory segregation. If the only neighborhood a family is allowed to purchase a home in is next to heavy industry and that industry is allowed to expand around them, the value of their home is almost certain to decline, making it difficult or impossible to sell and relocate away from the increasing pollution.

Multiple hazards confront many EJ communities. Residents of Hillcrest and Washington Coles were exposed to air pollution from multiple refineries, tank farms, and a sewage treatment plant, as well as soil and groundwater contamination from industrial sites. They endured repeated industrial accidents, fires, and chemical releases that resulted in neighborhood evacuations. The construction of Interstate 37 through their neighborhood in the 1960s added to their pollution exposure and isolated them from the city's other residential areas. At the same time, residents have suffered from disinvestment by the city, the closing of area schools, and the lack of community infrastructure, such as grocery stores.

Given the scope of the hazards, victories are often temporary. Community groups can invest all of their resources in stopping a particular industrial expansion only to have the same company, or one of its neighbors, apply for another expansion and pollution increase a few months later. Even if a permit challenge results in tighter pollution limits, companies often have repeated illegal emissions and face little enforcement. All of this can make public participation seem futile.

Even best case settlements won't fully remedy the harm to the community. Residents of the Washington Coles and Hillcrest neighborhoods have suffered for years. Many in the community are sick with respiratory illnesses and cancer. One of the two named petitioners on the civil rights petition passed away from cancer after the settlement but before her home could be purchased. While a relocation may be the best option for a community so exposed to environmental hazards, relocation usually scatters a community whose residents have multi-generational ties and, as in these neighborhoods, a proud history of community activism, civic engagement, and fighting for civil rights. The loss of that community is itself a significant harm.

Advocacy and Legal Strategies

Over many years, various individuals and organizations worked on environmental justice issues in Hillcrest and Washington Coles, using research, public education, organizing, outreach to elected officials, administrative permit challenges, and enforcement actions to try to protect the neighborhoods from further degradation. While some of these efforts were successful, the neighborhoods remained isolated, polluted, and largely neglected by the city.

The Harbor Bridge Project presented an opportunity to try to more comprehensively address neighborhood issues. On March 5, 2015, after filing comments on the project's Environmental Impact Statement but before the Record of Decision for the project was issued, the Texas Law Environmental Clinic and Texas RioGrande Legal Aid filed a Title VI Civil Rights complaint on behalf

of two African-American residents of the Hillcrest neighborhood, Jean Salone and Rosie Porter. The complaint alleged intentional discrimination as well as disparate impacts from the proposed highway and bridge, including: the further isolation and segregation of the neighborhoods, elevated noise levels, and increased exposure to pollutants, including carcinogens. Shortly thereafter, the complaint was joined by the Citizens Alliance for Fairness and Progress and 22 additional residents. Title VI of the Civil Rights Act requires federal agencies to adopt rules to ensure that any project or program that receives federal assistance complies with the Civil Rights Act's prohibition on discrimination on the basis of race, color, or national origin. 42 U.S.C. §2000d. The U.S. Department of Transportation's rules prohibit funding recipients from administering programs in ways which have the "effect of subjecting persons to discrimination because of their race, color, or national origin." 49 C.F.R. §21.5(b)(2). The rules also prohibit recipients from siting facilities in a manner that subjects persons to discrimination and require funding recipients to take action to address the impacts of past discrimination. 49 U.S.C. §49.21(3) & (7).

On April 9, 2015, approximately one month after it was filed, FHWA accepted the complaint and began an investigation that included meetings with neighborhood groups and with individuals in their homes, site visits, document review, and mitigation discussions. Most importantly, FHWA determined that it would not issue the Record of Decision for the project, which would allow construction to begin, until it completed its investigation. The agency was also clear that, if the investigation determined there was either intentional discrimination or a discriminatory effect based on race, the bridge either could not be built on the preferred route or the discriminatory effects would have to be eliminated through mitigation.

Role of the Corpus Christi Community

As noted above different groups within the community had been active on different environmental issues and permit challenges. These included Citizens for Environmental Justice, the Clean Economy Coalition, and the Environmental Integrity Project. Their work helped to reduce some of the pollution load on the community and to educate local industry and government officials about the history of the neighborhoods and the conditions residents were facing.

Residents of Hillcrest and Washington Coles decided, however, that a new group was needed to focus specifically on advocating for community interests with respect to the Harbor Bridge Project. The Citizens Alliance for Fairness and Progress ("Citizens Alliance") was formed with a charter that recognized the twin goals of: (1) advocating for an equitable, voluntary, community-wide relocation program and (2) defending the neighborhoods from future degradation on behalf of those who did not wish to relocate. The charter also set out a consensus process for decision making.

The Citizens Alliance met weekly in order to provide residents with information about the Harbor Bridge, develop settlement proposals, respond to the agency investigation, answer media questions and issue press releases, and maintain open communication with residents about their options and apprehensions. The settlement of the civil rights complaint would not have happened without the tireless efforts of the Citizens Alliance. Today, the organization's members serve on the Citizens Advisory Board, created pursuant to the settlement, and continue to advocate to ensure that the settlement is fairly implemented.

In addition to legal support from the UT Law Environmental Clinic and Texas RioGrande Legal Aid, the Citizens Alliance's efforts were aided by technical, legal, and financial support from many organizations, including: Texas Low Income Housing Information Services, the Lawyers' Committee for Civil Rights, Sustainable Systems Research Group, LLC, and the Impact Fund.

Outcomes

On December 17, 2015, just nine months after the complaint was filed, the Federal Highway Administration and Texas Department of Transportation entered into a Voluntary Resolution Agreement that required mitigation to “ensure that the affected minority persons in the Northside Community of Corpus Christi ... do not bear disproportionately high and adverse human health or environmental effects as a result of the Project.” The mitigation included agreements from the Port, City, and Housing Authority of Corpus Christi to participate in the mitigation and included:

- A relocation program run by the Port of Corpus Christi and modeled on the Uniform Relocation Act, pursuant to which:
 - homeowners living in Hillcrest and a portion of the Washington Coles can relocate to a comparable house in a healthier neighborhood. Moving assistance and relocation costs are included.
 - renters in the same area can relocate and be paid an amount equal to the difference between their past and future rental costs for 42 months.
 - churches, small businesses, and public housing tenants also qualify for voluntary relocation.
- A City Liaison program to connect neighborhood residents to City and other housing financing, employment, health, welfare and legal services.
- A voluntary restrictive covenant program that allows residents to receive a payment and remain in their homes while restricting future residential use of the home at the time it is sold or conveyed. The covenant also grants an option for the Port to purchase the property for its appraised value at such time.
- Park improvements including a park commemorating Corpus Christi's historic black neighborhoods as well as an oral history project.
- Mitigation of construction impacts.

As of spring 2018, over 315 of the 400 qualified home owners have formally expressed interest in participating in the relocation program, over 210 offers had been made, and 124 families have relocated. Construction of the bridge is proceeding. Members of the Citizens Alliance remain active on the Community Advisory Board and continue to work to ensure that, as problems with the program arise with settlement implementation, they are resolved in a way that benefits the community.

Lessons and takeaways

There is a clear need for programs or settlements that comprehensively address the multitude of negative impacts to communities that have suffered environmental injustice and discrimination. But crafting those solutions is difficult and requires a strong, open, inclusive, local community organization that can broadly advocate for the interests of residents. And while relocation is certainly an

option that should be provided, it is not what every person in the community wants. Where a community does want to relocate, more work needs to be done to create relocation models that allow residents to move away from environmental harms but preserve as much as possible of the community structure, history, and relationships that are important for health and well-being.

In addition, the FHWA's response to the civil rights complaint in this case can serve as a model of an agency recognizing the extent of its jurisdiction and its responsibility to enforce the provisions of the Civil Rights Act. FHWA's willingness to quickly put the Harbor Bridge on hold while it investigated the complaint created the incentive and space for a broad coalition –including entities who were not part of the complaint itself but who had interests in the neighborhood and/or bridge – to work out a mitigation package.

While the settlement in this case is not perfect and there have certainly been significant bumps along the way, it is providing an opportunity for many residents to relocate to homes in healthier neighborhoods that will hopefully appreciate, rather than depreciate, in value over time. It has been the high point of my career to work with the strong, resilient, smart, creative, and persistent residents of Hillcrest and Washington Coles, to learn from them and to see them organize and stand up for their rights, and to see the federal government- even extremely belatedly - take seriously its obligation to enforce the Civil Rights Act.



The End Shutoffs Campaign: Energy Justice in California TURN – The Utility Reform Network

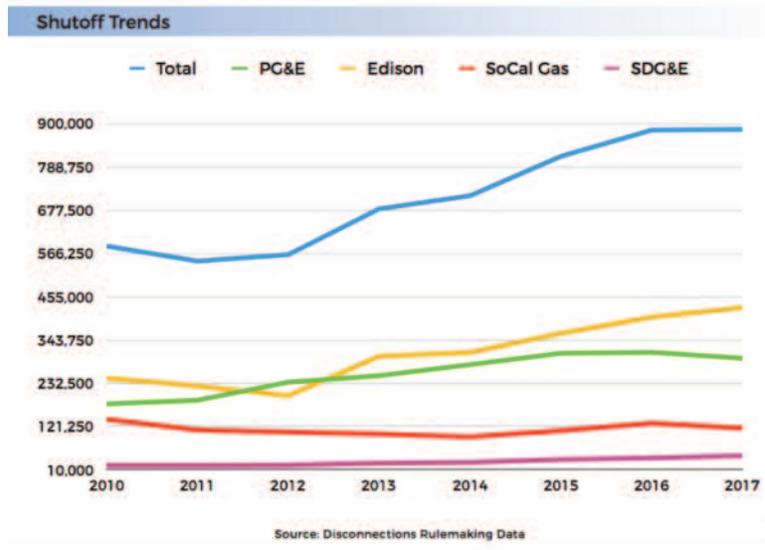
Gabriela Sandoval is the **Director of Strategic Initiatives** at **TURN (The Utility Reform Network)**, an organization based in San Francisco, California, that aims to hold utility corporations in the state accountable by demanding fair rates, cleaner energy, and strong consumer protections. For over 45 years, TURN has championed the cleanest energy and highest quality phone service at the lowest prices possible for residential customers, low-income households, and small businesses through legal advocacy, policy development, and community organizing.

Background: Energy Insecurity as a Social Justice Issue

One quarter of California residents struggles with energy insecurity. For them, energy is priced beyond reach. There are multiple ways to measure energy insecurity and utility shutoffs are one important metric. In 2017, California's big utility companies conducted over 886,000 shutoffs affecting at least 2.5 million people, most of whom are children. This is a cruel and inhumane revenue collection strategy used more and more frequently by the investor-owned utilities. The loss of basic electricity or gas service causes tremendous hardship and undue stress, including increased risk for heat- and cold-related illness such as heat stroke, hypothermia, and hyperthermia; sanitation issues as a direct result of lack of hot water; over-reliance on emergency services; and underutilization of

preventive programs. Shutoffs also create public safety issues when families are forced to use unsafe heating and lighting practices.

FIGURE 1



Utility shutoffs have skyrocketed in the last 8 years, increasing by over 50% from 585,000 shutoffs in 2010 to over 886,000 in 2017 (Figure 1). The shutoff rates of all of the electric utilities in California have increased as well. Shutoffs are increasingly used as a collection strategy. Other strategies, such as disconnection notices have decreased as shutoffs have increased (Figure 2). We also know that even as the economy improved in the aftermath of the Great Recession, utility disconnections have continued to rise (Figure 3).

FIGURE 2

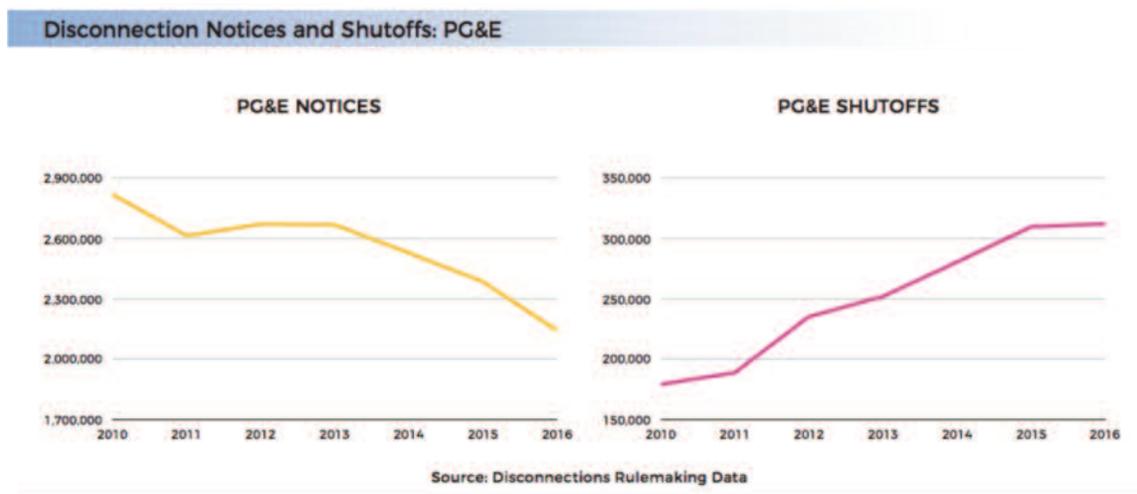
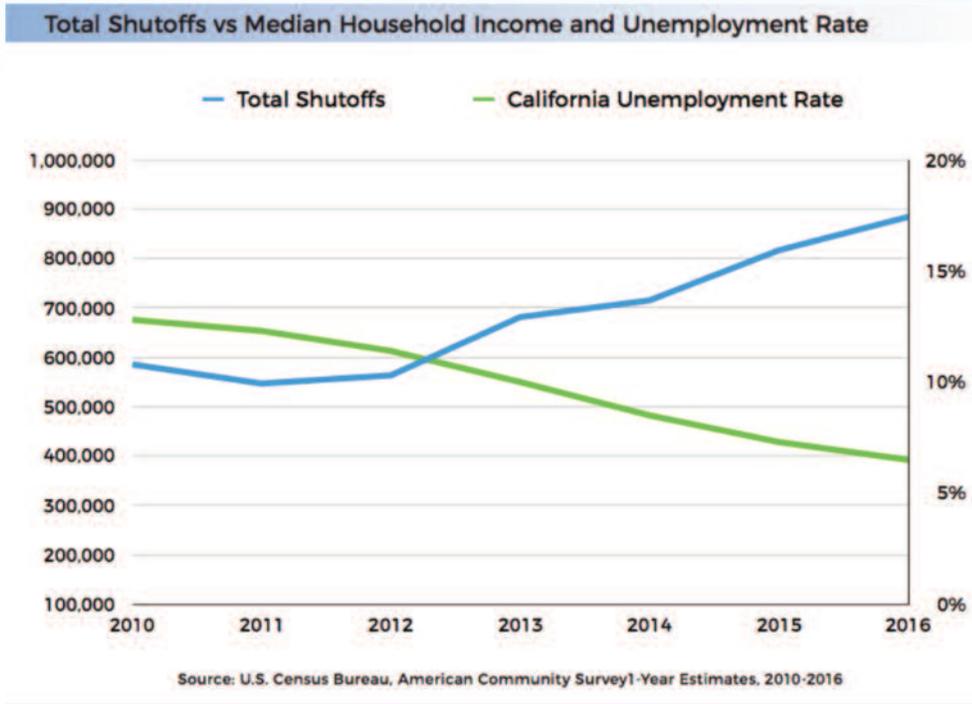


FIGURE 3



In addition, the following information demonstrates how energy insecurity is a compelling social justice issue:

- **There is a national affordability crisis in utilities.**

Utility disconnections are on the rise nationally. According to Sociologist Matthew Desmond, “In a typical year, almost 1 in 5 poor renting families nationwide missed payments and received a disconnection notice from their utility company” (2016:15) and of those approximately 1 of 7 was shut off by their utility company.

This has also been demonstrated by the rising trend in disconnections in California. In a state with high housing costs, energy insecurity is amplified. Approximately one in every 3 respondents to a recent TURN survey received a shutoff notice in the last year and 15% of the people with whom we spoke had been shut off at least once in the last 3 years. Almost 3 out of every 5 people who were shut off burned candles for light (56%). Almost 1 in 5 ran extension cords from a neighbor’s home (17%). Fourteen percent (14%) turned their oven on and left it open for warmth. Another 14% were forced to warm water on a gas stove or over a fire in order to bathe.

- **Utility disconnections are a hidden hardship.**

For families who find that energy is priced beyond their reach, a utility shutoff can be stigmatizing. Our consumer advocate regularly finds that people who experience a shutoff are embarrassed by their inability to pay for utilities making it difficult to shed light and remedy this troubling phenomenon.

People who are shut off by their utility companies face a series of consequences and as a result of losing power that create challenges in and of themselves. According to our survey, almost 3 out of

5 of the utility customers who had experienced a shutoff in the last 3 years had had food spoil in their refrigerator because there was no electricity in their home. More than 2 out of 5 were unable to eat properly because they were unable to cook food. Almost 2 of 5 had a family member who was unable to complete homework assignments due to a lack of light. Three of 10 lost telephone service because they could not charge their cell phone. More than 1 out of 4 had a hard time keeping up with their hygiene because they could not bathe or shower. Sixteen percent of respondents got sick because they could not heat their home. One out of 10 respondents were unable to go to work for one or more days. Just over 1 in 20 respondents were injured due to a lack of light, kept children home from school, experienced heatstroke or another illness because they couldn't cool their home or became sick because an electric medical device they needed was unavailable due to a shutoff.

During a shutoff, families and individuals are then forced to suffer unsafe temperatures or unsafe heating or lighting such as using stoves, running extension cords from a neighbor's home, or using candles to live without electricity or gas.

- **Families struggling to make ends meet and communities of color are disproportionately affected by utility shutoffs.**

People struggling to make ends meet and families of color are more likely to live in substandard housing with deficient heating, cooling and poor insulation that is unhealthy and unsafe and leads to higher utility bills.

When we analyzed the difference between the racial makeup of utility companies' service territories as compared to the racial makeup of the ZIP codes with the highest shutoff rates, we found that those ZIP codes have disproportionately larger Latinx and Black populations. Not surprisingly, those ZIP codes also have significantly lower median household incomes than the service territories as a whole—in some cases over \$20,000 lower.

- **Shutoffs are a hidden driver of housing displacement.**

In 2016, 1 out of 10 families disconnected by the big utility companies in California was never reconnected. While the data do not tell us what happens to them, our consumer advocate, partner organizations and participatory research provide evidence that while some people may live indefinitely without power, for others a shutoff can trigger an eviction, cause families to "double up" with other family members or become homeless.

- **Medically vulnerable populations have the worst reconnection rates.**

For people who have certain health conditions or use medical equipment that uses electricity, energy insecurity can be particularly acute. For them, a shutoff can mean the difference between life and death. The data show that in 2016, between 34% and 50% of people registered for the California utility companies' Medical Baseline program—a discount program for customers with medical issues requiring additional energy use—were never reconnected. It is troubling that we do not know what happens to these customers who represent some of the most vulnerable in our communities.

Legal and Advocacy Strategies

We approach energy insecurity and shutoffs with multiple approaches. These include the following:

- **We represent utility customers in proceedings at the California Public Utilities Commission (CPUC) supported by intervenor compensation.**

The CPUC is responsible for ensuring California utility customers have access to safe, reliable and affordable service. The Commission must hear from a diversity of stakeholders and perspectives in order to make the most informed decisions possible. To that end, the CPUC implemented the Intervenor Compensation Program in 1981. The program was codified by the California Legislature in 1985. This code allows eligible individuals and entities to represent residential or small business customers in Commission proceedings involving electric, gas, water and telephone utilities.

Intervenor compensation allows our team of attorneys and analysts to intervene on behalf of utility customers in proceedings at the California Public Utilities Commission and receive compensation for the costs associated with their participation. This program allows us to help California ratepayers save billions of dollars every year.

- **We organize ratepayers**

Only individuals experiencing energy insecurity can adequately describe the effects of energy priced out of reach to policymakers and other decision makers. We provide organizations and individuals with speakers' trainings so that individuals can feel confident about sharing their lived experiences with commissioners, legislators and others effectively.

We build long-term symbiotic relationships with organizations throughout California in order to keep communities informed about utility proposals that could increase bills and affect the reliability or safety of their utilities. We work to ensure public hearings are as accessible as possible to community members, facilitate bringing public hearings to communities most affected by potential proposals and work with our coalition to bring ratepayers to those hearings to share their stories.

- **We sponsor legislation and engage in strategic legislative advocacy.**

We sponsor legislative efforts in order to keep utility service affordable and reduce then number of shutoffs in California. In 2017, we sponsored Senate Bill 598 (Hueso) – The Shutoffs Reduction Act. We brought our partners to the state capitol in Sacramento to meet with their state legislators and legislative staff to educate their representatives about the effects of energy insecurity and shutoffs. We garnered support for this bill from organizations throughout California and our efforts paid off. SB 598 was signed into law by Governor Brown in the fall of 2017. The Shutoffs Reduction Act:

- Requires the CPUC to set a benchmark for the utilities to reduce shutoffs by 2024.
- Requires the CPUC to adopt shutoffs as a metric of energy insecurity.
- Requires the CPUC to use this metric to consider the impact on shutoffs of General Rate Cases brought every three years by the utility companies.
- Prohibits the utility companies from disconnecting people who are living out their final days at home in hospice, those with life-threatening conditions, and people on life-support equipment.

In 2018, We sponsored legislation—Senate Bill 1338 (Hueso) – Medical Baseline Enrollment—to increase accessibility of the Medical Baseline program. Medical Baseline provides a discount and

special protections to medically vulnerable customers and is currently very under-enrolled. Governor Brown signed SB 1338 into law in September of 2018. This bill expands the pool of healthcare providers who can sign certification forms for Medical Baseline and provides new avenues for County Public Health Departments to become involved in outreach and enrollment for the program.

- **We conduct research, use data and collect stories to engage and move decisionmakers.**

Although California utilities have been reporting disconnection data quarterly since 2010, that data has very rarely been analyzed for trends and potential implications. We were recently able to use this publicly available data, additional data provided by the utility companies, data gathered through 800 in-depth surveys with customers struggling with energy insecurity and data from interviews with a subset of those survey respondents to publish the report, [Living Without Power: Health Impacts of Utility Shutoffs in California](#).

Lessons and Recommendations

The main lessons we would share with other advocates are: ratepayers have to share their stories if we want to bring this issue to light and resolve it effectively; data reporting on utility shutoffs must be accurate, standardized, accessible and usable; and a multi-pronged strategic approach works best.

In addition, we have learned how valuable it is to broaden the field of allies you can bring to the table. In TURN's experience, framing shutoffs as a public health concern allowed us to bring new energy, perspectives and allies into the usually narrow field of utility policy. Similarly, housing rights advocates and other stakeholders in complementary fields provide invaluable support and input.

No approach can assume that we want to maximize environmental benefits without taking into consideration the effects and costs of those benefits to the most vulnerable in our communities. We like to say that "the cost of greening the grid should never cut people off from the grid." This approach applies to many aspects of environmental justice.

Ultimately, we hope utilities will be fairly and affordably priced and that alternatives to revenue collection will be identified and implemented in order to ensure universal utility service for all California residents. Energy justice should be understood as a basic human right. We must work from the assumption that we all need safe, reliable, and affordable energy access. Universal utility service much be the objective.



A Case Study: Working Together to Clean Up Freight Transportation

Melissa Lin Perrella is the **Senior Director of the Environmental Justice, Healthy People & Thriving Communities Program** at the **Natural Resources Defense Council (NRDC)**, and is based in Santa Monica, California. In her role at NRDC, she represents communities that have been hardest hit by freight-related air pollution and litigates for the enforcement of the National Environmental Policy Act and the California Environmental Quality Act. The NRDC is an environmental advocacy group that works to ensure the rights of all people to clean air, clean water, and healthy communities.

Martha Matsuoka is the **Executive Director of the Urban and Environmental Policy Institute** at **Occidental College**, where she is also an Associate Professor. She focuses on issues such as sustainable community development, social movements, and environmental justice bring these perspectives into research on ports and development as well as gentrification and displacement. She has served on the Boards of a range of organizations including the Asian Pacific Environmental Network and the Jessie Smith Noyes Foundation and currently serves on the Leadership Board of the Los Angeles Food Policy Council and the Board of Interfaith Movement for Human Integrity.

Angelo Logan is the **Campaign Director** at the **Moving Forward Network**. The Moving Forward Network aims to build grassroots power and transform freight community by improving community health, quality of life, the environment and labor conditions. Angelo is the co-founder of East Yard Communities for Environmental Justice and has worked with a wide variety of coalitions to achieve health protective policies, particularly regarding goods movement and Green Zones. Angelo currently serves on several boards and working groups advancing equity and justice.

Introduction

Los Angeles was well-known for the thick gray haze that blanketed the region thirty years ago. While many blamed emissions from cars, a key culprit was air pollution from the highly industrialized ports of Los Angeles and Long Beach. Today, while air pollution from port operations remains too high, every port project in the San Pedro Harbor is cleaner than it was several decades ago. The Ports of Los Angeles and Long Beach now tout their environmental stewardship—and have adopted air quality initiatives for ships, trucks, trains, and other equipment that haul our cell phones, tennis shoes, and automobiles—and other ports around the globe are watching. This progress did not happen overnight. Nor did the Ports clean up voluntarily. The often-overlooked backstory is how advocates and environmental justice communities partnered to build power and secure successful clean air programs.

Initial advocacy efforts focused on limiting diesel pollution from one shipping terminal, and then called for regional port clean air programs and state-wide regulations. And as even more advocates across the country began to join forces, a nationwide campaign calling for “zero-emissions” was launched.

This case study discusses the growing influence of environmental justice and frontline communities to clean up the freight transportation sector. It also illustrates the important role of partnerships—particularly between communities, mainstream environmental organizations, and academia in advancing health, environmental, and justice policies.

The Air Pollution Problem from Los Angeles and Long Beach’s Ports

Southern California is an “international gateway” for trade. The neighboring ports of Los Angeles and Long Beach comprise the San Pedro Bay Complex, and together, rank as the world’s 9th busiest container port complex. In 2017, the two ports handled cargo with a combined value of over \$460 billion, and 32% of the nation’s containerized trade.²

The traffic from the port complex, combined with that of attendant diesel-emitting port-serving ships, trucks, trains and other equipment, results in significant sources of air pollution in a region that consistently ranks as one of the most polluted in the nation. The area surrounding the ports, the Los Angeles Harbor Region, is home to over 875 thousand people, over 65% of whom are people of color,³ making the health and environmental impacts of the port complex and attendant transportation a pressing environmental justice issue.

Diesel exhaust contains smog precursors and a variety of harmful gases and more than 40 other known cancer-causing compounds. In 1998, California identified diesel particulate matter as a

1 https://www.portoflosangeles.org/idx_environment.asp; <http://polb.com/environment/default.asp>.

2 “Facts and Figures 2017.” *The Port of Los Angeles*, 2017, www.portoflosangeles.org/pdf/POLA_Facts_and_Figures_Card.pdf; <http://polb.com/about/facts.asp>.

3 “The Harbor.” *Mapping LA: Regions*, Los Angeles Times, 2018, maps.latimes.com/neighborhoods/region/harbor/.

“toxic air contaminant” based on its potential to cause cancer.⁴ In 2012, the World Health Organization’s International Agency for Research on Cancer similarly concluded that diesel engine exhaust is “carcinogenic to humans.”⁵

The neighborhoods surrounding the ports are often called the “diesel death zone” where approximately 15% of children in Long Beach suffer from asthma compared to 9% of children in the United States.⁶ In just two southern California communities impacted by freight movement activities (Riverside and Long Beach), researchers estimated an annual health cost of \$18 million for asthma and exacerbations of asthma due to freight-related air pollution.⁷

China Shipping Terminal Lawsuit

In the late 1990s, residents near the Port of Los Angeles increasingly noticed the effects of expansion at the Ports of Los Angeles and Long Beach. By this time, scientists had established a link between diesel exhaust from trucks, ships and trains to elevated levels of asthma, cancer, premature death, heart attacks and other health impacts.⁸ These findings raised fears about how port expansion projects would intensify health impacts in already environmentally-burdened harbor community.

Around this time, the Port of Los Angeles was proposing to expand its China Shipping terminal.⁹ Once built, the project would result in one million new annual diesel truck trips into local neighborhoods, over 250 annual calls by ocean going vessels burning some of the dirtiest fuel on the market, and increased pollution from countless numbers of diesel tugboats and container handling equipment. The project—which would occupy the equivalent of five football fields—would be next door to thousands of San Pedro and Wilmington residents, the closest of whom lived only 500 feet from the project site.

After being turned down by private counsel, residents near the Port of Los Angeles approached the Natural Resources Defense Council (NRDC), asking if anything could be done to protect them from the project’s harmful effects. After extensive research and deliberation, in 2002, NRDC challenged

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- 4 “Overview: Diesel Exhaust and Health.” *California Air Resources Board*, California Environmental Protection Agency, 2018, www.arb.ca.gov/resources/overview-diesel-exhaust-and-health.
 - 5 “Diesel Engine Exhaust Carcinogenic.” *International Agency for Research on Cancer*, World Health Organization, 12 June 2012, www.iarc.fr/en/media-centre/pr/2012/pdfs/pr213_E.pdf.
 - 6 “Health Statistics 2010.” *City of Long Beach Department of Health and Human Services*, 2013, <http://www.long-beach.gov/globalassets/health/media-library/documents/planning-and-research/reports/2010-health-statistics/2010-health-statistics>.
 - 7 S.J. Brandt, L. Perez, N. Künzli et al., “Costs of Childhood Asthma Due to Traffic-Related Pollution in Two California Communities,” *European Respiratory Journal*, vol. 40, 2018, pp. 363–70 (2012), <http://doi.org/10.1183/09031936.00157811>.
 - 8 “Overview: Diesel Exhaust and Health.” *California Air Resources Board*, California Environmental Protection Agency, 2018, www.arb.ca.gov/resources/overview-diesel-exhaust-and-health; California, Office of Environmental Health Hazard Assessment, et al. “Part B: Health Risk Assessment for Diesel Exhaust”, California Environmental Protection Agency, 1998, pp. 1–453, https://www.arb.ca.gov/toxics/dieseltac/part_b.pdf.
 - 9 “City of Los Angeles and Community and Environmental Groups Reach Record Settlement of Challenge to China Shipping Terminal Project at Port.” *Natural Resources Defense Council*, 5 Mar. 2003, www.nrdc.org/media/2003/030305.

the expansion project in court. NRDC represented two San Pedro homeowners' groups and an advocacy organization, the Coalition for Clean Air. The lawsuit asserted that the City and Port of Los Angeles' decision to expand the China Shipping terminal violated the California Environmental Quality Act (CEQA) by failing to disclose how the project could harm public health and the environment, and by failing to take reasonable actions to reduce that harm. On October 23, 2002, the Court of Appeals ruled in favor of the community.¹⁰

The Court precluded the Port from moving forward with the project until it complied with CEQA. The Port came to the settlement table and the following year, the parties settled—allowing the Port to proceed with an improved project in exchange for a \$50 million air quality and aesthetic mitigation fund, use of cleaner technologies at the China Shipping terminal, including “shoreside power” that requires ships to plug into power while at dock instead of idling their dirty diesel engines, and alternative fuel container handling equipment, among other things. Unprecedented at the time, environmentalists and a small harbor community bravely took on one of the largest economic engines in the State and were triumphant.

Progress Post-China Shipping Terminal Case

The China Shipping terminal case demonstrated that the ports are legally required to disclose and mitigate their environmental impacts. The settlement agreement deployed technologies not yet used by any other container terminal in the world. Communities now had the law, science, and technology on their side. Advocates calling for cleaner port operations were then joined by environmental justice communities near diesel-emitting railyards, warehouses, and busy truck corridors, as well as academic institutions and a growing list of mainstream environmental organizations.

Several years after the China Shipping settlement, their collective advocacy helped convince the Ports of Los Angeles and Long Beach to reduce port-generated pollution by 45% by 2011 with the adoption of the Ports' first joint Clean Air Action Plan (CAAP).¹¹ The CAAP included a compendium of initiatives to clean up ships, trucks, trains, and equipment.

Four years later, the twin port complex updated CAAP to include a promise to lower the cancer risk levels experienced by port-adjacent communities by port activity by 85%.¹² This promise is being met, in part, by a community, environmental, and labor-backed Clean Truck Program that modernized approximate 15,000 port-serving trucks in less than five years.¹³

10 *Natural Res. Def. Council et al. v. City of Los Angeles et al.*, 103 Cal. App. 4th 268 (2002).

11 “San Pedro Bay Ports Clean Air Action Plan.” Port of Los Angeles, <https://www.portoflosangeles.org/environment/caap.asp>; “San Pedro Bay Ports Clean Air Action Plan, Overview,” The Ports of Los Angeles and Long Beach, 2006, pp. 1-44, 2006, https://www.portoflosangeles.org/CAAP/CAAP_Overview_Final.pdf.

12 “San Pedro Bay Ports Clean Air Action Plan.” Port of Los Angeles, <https://www.portoflosangeles.org/environment/caap.asp>; “San Pedro Bay Ports Clean Air Action Plan 2010 Update.” San Pedro Bay Ports Clean Air Action Plan 2010 Update, The Ports of Los Angeles and Long Beach, 2010, pp. 1-181, https://www.portoflosangeles.org/CAAP/2010_CAAP_UPDATE_FINAL.pdf.

13 Id.; “Clean Truck Program.” Port of Los Angeles, City of Los Angeles, 2018, https://www.portoflosangeles.org/ctp/idx_ctp.asp.

Recently, in 2017, CAAP was updated a third time to include a community-driven goal of ensuring an all zero-emissions port-serving truck fleet by 2035 and a zero-emissions cargo-handling equipment fleet by 2030.¹⁴

Meanwhile, over the last fifteen years, based on deep public support and engagement, California adopted a suite of state regulations that require ships to use cleaner fuel and shore-side power, and that replace older, more polluting trucks and equipment that serve the port with newer, cleaner models. When industry associations challenged these efforts, NRDC added its legal expertise to help the state defend the regulations in court.

Central to each of these successes was deep community interest and engagement on the issues that matter most—clean air and healthy children, and alliances that leveraged multiple forms of expertise—legal, policy, organizing, and scientific research.

Expanding Southern California’s Success to Build a National Network

The coalition work that led to clean air victories in California did not stop at that state’s borders. In 2005, 2007 and 2010, the Trade, Health & Environment (“THE”) Impact Project¹⁵ organized three Moving Forward conferences to focus on the health and environmental impacts of global trade. The conferences were attended by hundreds of community representatives from around the world, academics, and allies from labor, environment, health, and legal arenas. Participants learned about the health effects of diesel; technological, regulatory, and policy strategies for reducing emissions from the freight transportation sector; and discovered a shared narrative on the environmental injustices created by global trade.

In 2011, The Kresge Foundation funded, and Occidental College and University of Southern California completed, the “Global Trade Impacts” report which documented the health and community impacts from freight and port related activities, proposed expansion projects across the U.S., and community mobilizations around those projects.¹⁶ Kresge then began supporting organizations with diverse skills—organizers, scientists, lawyers, and media specialists—to work together to tackle pollution from the freight sector.

The Moving Forward Network (MFN)¹⁷ was established in 2012 based on the relationships formed at the three conferences mentioned above, the need for a national network, as described in the

14 “2017 Clean Air Action Plan Update.” Ports of Los Angeles and Long Beach, 2017, pp. 1–93, <http://www.cleanairactionplan.org/documents/final-2017-clean-air-action-plan-update.pdf>.

15 “THE (Trade, Health, Environment) Impact Study.” *National Institute of Environmental Health Sciences*, U.S. Department of Health and Human Services, 2018, <https://www.niehs.nih.gov/research/supported/translational/community/the-impact/index.cfm>.

16 Matsuoka, Martha, et al. “Global Trade Impacts: Addressing the Health, Social and Environmental Consequences of Moving International Freight through Our Communities.” Occidental College and University of Southern California., 1 Jan. 2011. <https://kresge.org/library/global-trade-impacts-addressing-health-social-and-environmental-consequences-moving>; <https://kresge.org/sites/default/files/Global%20Trade%20Executive%20Summary%203-21.pdf> [Executive Summary].

17 “Home Page.” *Moving Forward Network*, 9 June 2016, www.movingforwardnetwork.com.

Global Trade Impacts report, and with support of The Kresge Foundation. MFN centers grassroots, frontline community expertise and engagement, and fosters partnerships between these groups and big green, labor, industry, and academia. It seeks to replicate and expand the partnerships that led to progress at Southern California ports on a national scale.

MFN involves over 50 member groups from across the United States¹⁸ including directly impacted communities, more than half a dozen academic institutions, and environmental, legal, and media organizations. Its diverse membership facilitates an integrated and geographically dispersed advocacy strategy that incorporates organizing, communications, research, legal and technical assistance, capacity building, and leadership development. This strategy respects multiple forms of expertise and builds collective power.

MFN also develops national campaigns that complement local efforts. MFN has:

- Launched a national zero-emission campaign calling for the clean-up of all freight facilities, and use of zero-emissions equipment and vehicles
- Fostered partnerships between MFN's lawyers and scientists, and communities in New Jersey, Kansas, California, and Mississippi on legal, research, and/or local policy efforts
- Cultivated direct engagement between environmental justice organizations and the former EPA Administrator, other senior EPA officials in Washington, D.C., and members of Congress to elevate community concerns over pollution from the freight transportation sector to inform national air quality regulations and environmental justice policies, and resist rollbacks to environmental health protections
- Hosted community-led toxic tours for government officials in multiple regions to allow decision-makers to meet with frontline communities, and see pollution burdens first-hand
- Amplified the stories of environmental justice communities by pairing a national media firm with frontline communities, resulting in extensive media coverage in local and national outlets

Lessons Learned

The following approaches were key to securing the achievements discussed above and can be replicated by coalitions in other contexts.

1. **Root campaigns in frontline communities.** Sustained, durable progress requires promoting community engagement and leadership. Those most directly impacted should be at the forefront of the advocacy since they have the most at stake. These communities will also monitor and protect hard fought victories.
2. **Promote integrated strategies.** Scientists can't do it alone. Lawyers can't do it alone. Communication gurus can't do it alone. Organizers can't do it alone. However, together they are a formidable force. Advocates must build alignment and respect multiple forms of expertise.

18 MFN has members in Southern California, Central California and the Bay Area, Houston, Kansas City, Chicago, Mississippi, Alabama, South Carolina, Georgia, Florida, New York, and New Jersey.

3. **Advocate in multiple venues.** There isn't a single government agency that regulates all sources of industrial pollution. In the ports context, addressing pollution from ships, trucks, and trains required navigating multiple jurisdictions with varying degrees of legal authority. Be prepared to advocate locally, regionally, and at the state and national levels.
4. **Commit to principled partnerships and self-transformation.** Working in a coalition is hard. It requires consensus building, transparency, trust, and patience. In coalitions comprised of diverse groups, it requires understanding our individual privileges and biases so that partners can more effectively and respectfully work together.
5. **Understand that the work is personal and urgent.** The air we breathe, the water we drink, the food we eat, and the parks where our children play is deeply personal. Respect the urgency advocates bring to these issues. Understand the economic, legal, political, and cultural systems that have resulted in environmental injustices, and support the calls for systems change.
6. **Make a long-term commitment to social change.** Progress can be slow. And as coalitions become more successful and sophisticated, so do their opponents—requiring long-term, evolving strategies. Agents for social change must invest for the long run.

Moving Forward

The fight for environmental justice near ports, railyards, warehouses, and other freight facilities continues. In 2016, EPA estimated that approximately 39 million people in the United States—mostly low-income people of color—live close to ports and are exposed to higher levels of diesel emissions.¹⁹ Also, the list of serious health impacts from diesel exhaust exposure is growing. Scientists report linkages between exposure to traffic related pollution, including from diesel-powered vehicles, and low birth rate, premature birth, lower IQ, diabetes, stroke, congestive heart failure, heart disease, obesity, asthma, and allergies.²⁰ Further, the transportation sector generates the largest share of greenhouse gas emissions in the United States. In 2016, that sector, which includes the

19 EPA, National Ports Strategy Assessment, at 1, 4 (Sept. 2016) available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100PGK9.pdf>.

20 Wilhelm, Michelle, et al. "Traffic-Related Air Toxics and Term Low Birth Weight in Los Angeles County, California." *Environmental Health Perspectives*, vol. 120, no. 1, Aug. 2011, doi:10.3897/bdj.4.e7720.figure2f [exposure linked to low birth weight]; Christopher S. Malley, Johan C.I. Kuylenstierna, Harry W. Vallack, Daven K. Henze, Hannah Blencowe, Mike R. Ashmore. Preterm birth associated with maternal fine particulate matter exposure: A global, regional and national assessment. *Environment International*, 2017 [exposure linked to premature birth]; Perera, Frederica, et al. "Prenatal Airborne Polycyclic Aromatic Hydrocarbon Exposure and Child IQ at Age 5 Years." *Pediatrics*, vol. 124, no. 2, Aug. 2009, pp. 195–203, doi:10.1542/peds.2008-3506; ZJ, Andersen, et al. "Diabetes incidence and long-term exposure to air pollution: a cohort study." *Diabetes Care*, vol. 35, no. 1, Jan. 2012, pp. 92-98, doi: 10.2337/dc11-1155 [exposure linked to lower IQ]; ZJ, Andersen, et al. "Diabetes incidence and long-term exposure to air pollution: a cohort study." *Diabetes Care*, vol. 35, no. 1, Jan. 2012, pp. 92-98, doi: 10.2337/dc11-1155 [exposure linked to diabetes]; T, To et al. "Chronic disease prevalence in women and air pollution—A 30-year longitudinal cohort study." *Environmental International*, vol. 80, July 2015, pp. 26-32, doi: 10.1016/j.envint.2015.03.017 [exposure linked to diabetes, stroke, congestive heart failure, and heart disease in women]; Dong, Guang-Hui, et al. "Ambient Air Pollution and the Prevalence of Obesity in Chinese Children: The Seven Northeastern Cities Study." *Obesity*, vol. 22, pp. 795-800, doi: doi:10.1002/oby.20198 [exposure linked to obesity in children]; Finkelman, Fred. "Diesel exhaust particle exposure during pregnancy promotes development of asthma and atopy." *The Journal of Allergy and Clinical Immunology*, vol. 134, issue 1, pp. 73-74, doi: 10.1016/j.jaci.2014.04.002 [exposure linked to development of asthma and atopy].

movement of people and goods by cars, trucks, trains, ships, planes, and other vehicles generated nearly 30% of this country's 2016 greenhouse gas emissions.²¹

To make matters worse, trucking, shipping and railroad associations have armies of lawyers and lobbyists that are working night and day to chip away at our hard-fought clean-air victories. And the current federal administration is taking their calls, with plans to roll-back existing environmental and health safeguards.

In Southern California, more port, railyard, warehouse, and highway projects are in the queue to be built dangerously close to schools and homes. And while the China Shipping settlement brought new technologies into use at container terminals, and millions in mitigation funds, we learned in 2015 that the Port of Los Angeles had not fully implemented all the air quality measures it committed to—creating an ongoing legal and political struggle to clean-up that terminal once and for all.

However, we have faith in the future. The progress made to date is indicative of what can lie ahead – significant emissions and health risk reductions, deployment of clean air technologies, and an even stronger, more aligned partnership that can change politics, build a stronger movement, and overcome the challenges ahead—whatever they may be.

21 "Sources of Greenhouse Gas Emissions, Overview." *United States Environmental Protection Agency*, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>; Sources of Greenhouse Gas Emissions, Transportation Sector Emissions." *United States Environmental Protection Agency*, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions#t1fn2>.



Girls playing in Baldwin Hills Park near the oil fields.

A Framework for Civil Rights, Environmental Justice, and Health Equity

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Introduction

The Civil Rights Revolution combined organizing and legal strategies to achieve social change. Martin Luther King, Jr., sought a “middle ground between riots on the one hand and timid supplications for justice on the other.”¹ Combined organizing and legal strategies provide that middle

¹ Rev. Martin Luther King Jr., Address at workshop on civil disobedience at Southern Christian Leadership Conference staff retreat, 29 November 1967, <https://kinginstitute.stanford.edu/encyclopedia/poor-peoples-campaign>.

ground for social change. The role of law remains an integral part of the Civil Rights Revolution today. Yet many advocates, agencies, academics, and funders ignore the need to implement civil rights laws when they address “equity,” “policy,” and community engagement.

The Southern Christian Leadership Conference under Dr. King’s leadership helped develop organizing strategies. This included the March on Washington for Jobs and Freedom, the Montgomery Bus Boycott, and the Poor People’s Campaign. Civil rights attorneys at the NAACP Legal Defense Fund, led by Thurgood Marshall, and others helped develop legal strategies in and out of court. Combined organizing and legal strategies culminated in the U.S. Supreme Court decision in *Brown v. Board of Education* in 1954. The Court in *Brown* upheld equal justice and human dignity when it struck down racial segregation in public schools as inherently unequal under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The *Brown* decision ranks as a canonical text with the Declaration of Independence and the U.S. Constitution in the history and governance of this nation.²

Civil rights law and lawyers remain an integral part of the Civil Rights Revolution to seek equal justice and just democracy today. Legal standards are necessary to gather and analyze data, measure progress and equity, and hold officials accountable. A comprehensive civil rights approach relies on coalition building, planning, data collection and analysis, media, policy and legal advocacy, negotiation, and, if necessary, access to justice through the courts—all as part of combined problem-solving strategies. At the same time, however, voluntary compliance with, and enforcement of, equal justice laws and policies can be preferable to action in court to achieve equal justice goals.³ Civil rights attorneys may work with community allies, clients, broader coalitions, experts, social scientists, academics, journalists, and agencies to seek racial and ethnic justice and overcome discrimination and structural barriers.

This paper presents an analytic framework that relies on social science evidence, good policy, and sound law to guide combined organizing and legal strategies to seek civil rights, environmental justice and health equity in and out of court. We also describe how the framework applies in the context of several specific advocacy projects.

The Framework

Civil rights, environmental justice, and health equity laws and policies provide a framework to promote equal access to publicly funded resources, and to prohibit discrimination based on race, color, national origin, income, gender, disability, and other factors. The framework is reflected in The National Academies of Sciences, Engineering, and Medicine Committee Report *Communities in Action: Pathways to Health Equity* (2017). The report recommends education, organizing, compliance, and enforcement related to civil rights laws and strategies. Civil rights approaches can mitigate negative effects of discrimination, and guard against unjustified discriminatory impacts that

2 Amar, AKHIL R., “Plessy v. Ferguson and the Anti-Canon” (2011). Faculty Scholarship Series. Paper 3706. http://digitalcommons.law.yale.edu/fss_papers/3706.

3 DOJ Title VI Legal Manual at page II-3 (supporters of Title VI considered it an efficient alternative to ponderous, time-consuming, and uncertain litigation) (2016). Available at <https://www.justice.gov/crt/fcs/T6manual>.

affect health equity, environmental justice, and community resilience.⁴ The report is one of the five most downloaded reports out of 323 the National Academies released in 2017.

The elements of this framework are as follows:

1. Describe what you plan to do.

For example, promote equal access to public lands, waters, and monuments; health resources; or clean air and water.

2. Include affected communities at every step of the process, including people of color, low income people, and other traditionally marginalized communities.

3. Analyze benefits and burdens on all people.

Numerical differences and disparities are generally the starting point for analysis (for example, in access or exposure to health resources; public lands, waters, and monuments; toxics and pollution; or health vulnerabilities).

Numerical disparities can be shown through statistical studies, demographic analyses, GIS mapping, surveys, historical analyses, anecdotal evidence, cumulative impacts, and other information.

Follow the money: who benefits, and who gets left behind?

Standards and publicly available data are necessary to measure progress and equity, and hold public officials accountable.

Consider the values at stake. For example: public health, human development, fun, and healthy recreation; climate justice and conservation; culture, history and art; and economic vitality, including quality jobs, housing, and green displacement. Equal justice and democratic governance underlie these other values.⁵

4. Analyze alternatives to what is planned.

4 The full NASEM report, recommendations, and comic book summary are available at www.nationalacademies.org/promotehealthequity. See the following pages, and authorities cited: pp. 11-12, 40-42, 102-105, 351-62, 464-69, 306-308, 360-62, 385-89, 429, 461-63.

The U.S. Department of Justice Title VI Legal Manual (2017) provides detailed guidance for civil rights and environmental justice compliance. The Manual is available at <https://www.justice.gov/crt/fcs/T6manual>. See generally Jean-Lou Chameau, William F. Ballhaus, and Herbert S. Lin, Eds., *Emerging and Readily Available Technologies and National Security-A Framework for Addressing Ethical, Legal, and Societal Issues*, p. 163 (NASEM 2014), <https://www.nap.edu/read/18512/chapter/7>.

5 On the values at stake, see, for example, NPS, *Healthy Parks, Healthy People Community Engagement eGuide* at page 15 (2014). Available at www.nps.gov/public_health/hp/hphp/press/HealthyParksHealthyPeople_eGuide.pdf (accessed June 24, 2016).

5. Develop an implementation plan and distribute benefits and burdens equitably, avoiding discrimination.

Discrimination includes unjustified discriminatory impacts regardless of intent, intentional discrimination, implicit bias, and systemic discrimination – or “business as usual.”

This framework, derived from a number of laws, can lead to changes in structural inequities, policies, and practices that perpetuate racial, ethnic, and other disparities. The framework can be applied across different areas such as health, park access, conservation, climate, education, housing, and transportation.

A civil rights approach based on this framework is not synonymous with litigation. Rather, the framework can be applied in different contexts, such as education, advocacy and planning. The tools of the Civil Rights Revolution include: organizing; attorneys working in and out of court; social science experts and academics; legislation; executive action; implementation by administrative agencies; action by courageous courts; media coverage; popular support through the right to vote; philanthropic support; and other means.

The Framework Applied

The following section discusses the framework as applied in different contexts. The examples all combine organizing and legal strategies.

1. Civil Rights, Park Access, Environmental Justice, and Health Equity

Equal access to parks, beaches, pools, schools, and health equity are compelling civil rights and environmental justice values. It’s not just about the simple joys of playing in the park as important as that is; it’s about equal justice, human dignity, and freedom. The Supreme Court upheld equal access to public parks and recreation on equal protection grounds in 1963, extending the reach of *Brown v Board of Education*.⁶ Rev. King wrote about parks in *Letter from a Birmingham Jail*: “[Y]ou suddenly find your tongue twisted and your speech stammering as you seek to explain to your six year old daughter why she can’t go to the public amusement park, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky.”⁷ Civil rights workers held “wade ins” at beaches and “swim ins” at pools, just as they did sit ins at lunch counters.⁸ The sit ins were not about hamburgers, either.

Environmental justice is the environmental arm of the Civil Rights Revolution. The City Project pushes the envelope of environmental justice to create benefits like parks, and not just stop

6 *Watson v. City of Memphis*, 373 U.S. 526 (1963).

7 Rev. King, *Letter from a Birmingham Jail*, kinginstitute.stanford.edu/king-papers/documents/letter-birmingham-jail.

8 See, e.g., Andrew W. Kahl, *The Land Was Ours: How Black Beaches Became White Wealth in the Coastal South* (2012); Andrew W. Kahl, *Free the Beaches: The Story of Ned Coll and the Battle for America’s Most Exclusive Shoreline* (2018).



Groundbreaking for L.A. State Historic Park.

.burdens like pollution. Nevertheless, traditional civil rights advocates prioritize environmental justice less because education, voting rights, residential segregation, and immigration are under siege. Mainstream environmentalists and even people of color commonly stereotype environmentalists as non-Hispanic white and highly educated. People of color and low income people are consistently the most impacted by environmental degradation, the biggest supporters of environmental protections, and the most marginalized or ignored by government, funders, and mainstream organizations.⁹

2. Legislation and Regulations

The framework is based on a number of laws, including Title VI of the 1964 Civil Rights Act.¹⁰ In light of accelerating roll backs at the federal level since the 2016 elections, many advocates are shifting to protect and strengthen equal justice protections at the state and local level. California is a national leader. The state has recently strengthened civil rights, environmental justice, and coastal justice protections through legislation and ballot measures, with state elected officials and govern-

9 Adam R. Pearson et al., *Diverse segments of the US public underestimate the environmental concerns of minority and low-income Americans*, www.pnas.org/content/early/2018/10/23/1804698115; Robert Bullard & Robert García, *Diversifying Mainstream Environmental Groups Is not Enough*, *NRPA Parks & Recreation Magazine* (2015), www.nrpa.org/parks-recreation-magazine/2015/july/diversifying-mainstream-environmental-groups-is-not-enough/.

10 These laws include the Civil Rights Act of 1964, the Fair Housing Act of 1968, the Americans with Disabilities Act of 1990, the Patient Protection and Affordable Care Act (ACA) of 2010, related regulations, executive orders, case law, and state parallels. See *Communities in Action* at 352 nn. 9-14 and authorities cited.

ment agencies making new or renewed commitments to protect the people.¹¹ Law, including legislation, is an essential component of civil rights protections for people who have traditionally been marginalized, ignored, or oppressed. It is not enough to rely only on the courts, or only on the federal government.

3. Diversity, Equal Justice, and Inclusion: Executive Action, and the Ballot Box

President Barack Obama dedicated the San Gabriel Mountains National Monument in 2014, proclaiming too many children, especially children of color, don't have access to parks. Conservation and social justice is about access for all, "young and old, black, white, Latino, Asian, Native American."¹²

President Obama released the Presidential Memorandum on *Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters* in 2017. The Memorandum calls on federal agencies, and recipients of federal financial assistance, to implement action plans to diversify their programs, activities, work forces, and visitors.¹³ The Memorandum, which reflects the framework above, presents a best practice for the nation. However, the Memorandum depends on implementation by federal agencies under a current administration that has not demonstrated a commitment to the laws and values underlying the Memorandum.

The people of California voted to tax themselves when they passed a \$4.1 billion park, water, and resource ballot measure in 2018 that calls on agencies to implement the principles of diversity, equal access, and inclusion from the Presidential Memorandum.¹⁴ Progressives took matters into their own hands to add the diversity language in Prop 68, rather than relying on mainstream environmentalists that have dictated the terms of past "pay-to-play" funding measures that promise without delivering equity. Advocates are now working to influence agency guidelines and funding decisions under Prop 68. This presents an opportunity to test the framework in action.

4. Public Lands, Waters, and Monuments: Community Planning and Administrative Action

11 For example, California Government Code 11135 et seq. and corresponding regulations promote equal justice and prohibit discrimination by state agencies and state-funded programs and activities for specified classes, parallel to federal civil rights laws such as Title VI. Section 11135 was recently amended to strengthen compliance and enforcement. See, e.g., California Equal Justice Amendments Strengthen Law under 11135, <http://www.cityprojectca.org/blog/archives/43834>. The Coastal Act was amended to explicitly address 11135 and environmental justice. See Free the Beach! Coastal Access, Equal Justice, and Hollister Ranch, Oct. 20, 2016, www.cityprojectca.org/blog/archives/45179.

12 Remarks by President Barack Obama at the Designation of the San Gabriel Mountains as a National Monument. 10 Oct. 2014. Available at www.whitehouse.gov/the-press-office/2014/10/10/remarks-president-designation-san-gabriel-mountains-national-monument.

13 Presidential Memorandum on "Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," Jan. 12, 2017. The Memo states existing law and requires federal agencies and recipients to adopt actions, including the Civil Rights Act of 1964 and its regulations. See, e.g., section (1)(a) (iii) (gather information), (1)(b)(ii) unconscious bias, (2) (iii) (recipients), (2)(vi) (action plans). The Memorandum is available at <https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/presidential-memorandum-promoting-diversity-and-inclusion-our-national>.

14 See California Proposition 68, Parks, Environment, and Water Bond, § 8,

The U.S. Army Corps of Engineers (USACE) and National Park Service (NPS) have each published detailed studies of green access in Southern California that reflect the framework in action through the public planning process. Each study concludes: (1) there is not enough park space, especially for children of color and low income children, in Los Angeles and other areas; (2) these disparities contribute to related health disparities such as obesity and diabetes based on those factors; and (3) federal agencies and recipients of federal financial assistance are required to address these disparities under civil rights and environmental justice laws and principles. These studies include the USACE plan to revitalize the Los Angeles River,¹⁵ and the NPS plan to create and expand national recreation areas in the Santa Monica Mountains¹⁶ and San Gabriel Mountains.¹⁷ Advocates continue the community struggle to implement these plans in ways that promote equal opportunity, climate justice, and local green jobs, while avoiding green displacement. As neighborhoods become greener, more desirable, and more expensive, the people who fought epic battles to improve their quality of life face the risk they can no longer afford to live or even work nearby.

5. Administrative Complaints for Clean Air, Water, and Green Space

Administrative complaints are not litigation. A person or organization can file an administrative complaint with an agency. The complaint can be as simple as a form or letter prepared without legal counsel, or it can be as complex as necessary for counsel to fully lay out the evidence and legal analysis in a detailed brief with hundreds of pages of exhibits attached. Grass roots advocates too often lack legal support to take proper action. Administrative complaints filed in North Carolina and Los Angeles show the difference great lawyering can make.

In a historic environmental justice victory, community leaders are holding the North Carolina Department of Environmental Quality (DEQ) responsible for letting industrial swine facilities harm people, air, and water without adequate swine waste controls. Swine feces and urine have tainted air and water for decades in North Carolina's African American, Latino and Native American communities and low income communities. The stench from lagoons, cess pools, and sprayfields makes it hard for people to breathe and harms their health. DEQ agreed to enforce federal civil rights laws in response to the administrative complaint the communities filed with counsel before the U.S. Environmental Protection Agency (EPA) under Title VI disparate impact regulations. The settlement agreement includes developing an environmental justice tool to help alleviate health and environmental inequities, providing a language access program, and changes to the draft general swine permit.¹⁸ In a separate legal action for nuisance, a jury in federal court awarded six neighbors

15 USACE, *Los Angeles River Ecosystem Restoration Integrated Feasibility Report* (2015). Highlighted excerpts are available at www.cityprojectca.org/blog/wp-content/uploads/2016/01/Relevant-Excerpts-LA-River-USACE-20160112.pdf.

16 NPS, *Rim of the Valley Corridor: Draft Special Resource Study and Environmental Assessment*, April 2015 (Santa Monica Mountains). Highlighted excerpts are available at www.cityprojectca.org/blog/wp-content/uploads/2015/05/NPS-ROTV-draft-study-April-relevant-excerpts-20150629.pdf.

17 NPS, *San Gabriel Watershed and Mountains Special Resource Study & Environmental Assessment*, p. 231 (Newsletter #5, Nov. 2011) (San Gabriel Mountains). Highlighted excerpts are available at <https://www.cityprojectca.org/blog/wp-content/uploads/2014/09/NPS-Draft-San-Gabriel-Study-Final-with-chapters-highlighted.pdf>.

18 The Yale Law School Environmental Justice Law Clinic, Julius L. Chambers Center for Civil Rights and EarthJustice represented the community groups. See North Carolina Environmental Justice Network et al., Press Release, With Groundbreaking Title VI Settlement Signed, North Carolina Environmental Justice Organizations Vow to Continue Their Fight, May 3, 2018 (on file with The City Project).

of a hog farm more than \$430 million in damages against pork producer Murphy-Brown for excessive noise, odor, flies, buzzards, and other disruptions to their quality of life.¹⁹ The nuisance suit suggests that environmental justice victories need not be based on civil rights grounds; a victory for the people on any ground is an environmental justice victory.

Past enforcement by the U.S. Department of Housing and Urban Development (HUD) provides an example of the framework in action, in the context of an administrative complaint filed by community leaders with counsel. HUD withheld federal subsidies for a proposed warehouse project in response to community agitation, and required a full study under Title VI and its regulations to consider the park alternative, and the impact on people of color and low-income people. This led to the creation of the L.A. State Historic Park and kicked off the greening of the Los Angeles River. This historic victory for people, planning, and parks is the result of community agitation, not a plan or vision by any politician.²⁰

6. Education and Civil Rights

A 2016 University of Southern California study analyzed extensive data on physical education and physical fitness in almost 900 California public school districts. According to the report, there are significant racial and ethnic, economic, and achievement indicators that affect student fitness across all districts. The California Education Code mandates that all public schools both provide physical education for students and assess students' physical fitness annually through the Fitnessgram standardized test. Yet many schools fail to meet physical education requirements.²¹ Combined organizing and legal strategies armed with academic social science evidence can promote physical education compliance. The Los Angeles Unified School District adopted a plan to comply with physical education and civil rights requirements in response to an administrative complaint filed by The City Project as counsel in 2008.²² The Los Angeles County Department of Public Health publishes a physical education model action plan (MAP) and a tool kit to support community action for compliance with physical education and civil rights requirements in public schools.²³ While litigation alone can work, access to justice through the courts combined with an organizing campaign out of court can work even better to ensure physical education and civil rights compliance, according to a UC Berkeley study.²⁴

19 Craig Jarvis, Jury awards hog farm neighbors their biggest verdict yet, News & Observer, Aug. 3, 2018, <https://www.newsobserver.com/news/business/article215971170.htm>.

20 Community advocates settled a related lawsuit under state environmental law. The state then bought the land and created the park, and the parties settled the administrative complaint and lawsuit. The City Project, NRDC, and a private firm filed the complaint and suit

21 Gabrielle Green, Jordan Henry, and Jenny Power, Physical Fitness Disparities in California School Districts (Practicum Report USC 2016), https://www.cityprojectca.org/blog/wp-content/uploads/2015/06/usc-rev_final_report_1.20.16.pdf.

22 Mariah Lafleur et al., *Physical Education and Student Activity: Evaluating Implementation of a New Policy in Los Angeles Public Schools*, 45(1) *Annals of Behavioral Medicine* 122-130, 2013.

23 LA County Department of Public Health, Physical Education Tool Kit and Model Action Plan (2015), <http://publichealth.lacounty.gov/cardio/>.

24 Hannah R. Thompson, Bhaani K. Singh, Annie Reed, Robert Garcia, Monica Lounsbery, Benjamin D. Winig, & Kristine A. Madsen, *Impact of Litigation on Compliance with California Physical Education Laws in Elementary Schools*, *Journal of Physical Activity and Health*, <https://doi.org/10.1123/jpah.2017-0307?2018>.

Education promotes equal opportunity. STEAM can work better than STEM: teaching culture, history and art can be more effective than science, technology, engineering, and math alone. A Stanford study found teaching ethnic studies in public schools dramatically improves education outcomes, including attendance and GPA in all subjects, including STEM. The study illustrates the importance of personal relevance in education.²⁵ Another national survey nevertheless found barely half of public school teachers believe they are competent to teach race and slavery.²⁶ This may explain why faculty members were placed on leave for dressing up like Mexican stereotypes and a border wall reading “Make America Great Again” for Halloween, and posting their picture on the Idaho school district’s social media page. Did the teachers intend to discriminate? Regardless, the actions had a discriminatory impact.²⁷

In higher education, academic experts and social scientists publish studies and serve as experts in organizing and legal campaigns that support civil rights, environmental justice, and health equity. Stanford economic historian Gavin Wright, for example, analyzed improved outcomes for all resulting from the Civil Rights revolution book called *Sharing the Prize: The Economics of the Civil Rights Revolution in the American South* (2013). Rich academic studies document lessons learned from the Civil Rights Revolution.²⁸

Foundations and government funders themselves can support education, compliance, and enforcement related to civil rights laws, as the National Academies highlight.²⁹ In addition, social and traditional media campaigns are important to educate the public about civil rights.³⁰ For example, Native Americans testified to save Panhe and San Onofre State Beach, and stop a toll road that would have devastated both. Acjachemen people posted a YouTube video about the significance of the sacred site in their own lives and culture. An editorial writer for the *L.A. Times* learned of the sacred site for the first time after seeing the video, visited the site, and ran an editorial in support of the Acjachemen people. The California Coastal Commission stopped the toll road based in part on the history of discrimination against Native Americans.³¹ The National Academies published its first comic book ever to reach a broader, younger, and more diverse audience on *Communities in Action*.³²

25 Thomas S. Dee & Emily K. Penner, *The Causal Effects of Cultural Relevance*, 54 *American Educational Research Journal* 127 (2016), www.nber.org/papers/w21865.

26 Southern Poverty Law Center, *Teaching Hard History: American Slavery* (2018), www.splcenter.org/sites/default/files/tt_hard_history_american_slavery.pdf.

27 Sarah Mervosh, *School District Apologizes for Costumes of Mexican Stereotypes and Border Wall Prop*, *N.Y. Times*, Nov. 3, 2018.

28 See, e.g., Bruce Ackerman, *The Civil Rights Revolution* (2014); D. B. Smith, *Health Care Divided: Race and Healing a Nation* (1999); J. Dittmer, *The Good Doctors: The Medical Committee for Human Rights and the Struggle for Social Justice in Health Care* (2009).

29 See NASEM *Communities in Action* sector briefs for communities, philanthropy, education, and universities, available at www.nationalacademies.org/promotehealthequity.

30 See, e.g., *Reporting Civil Rights: American Journalism*, vol. 1 & 2 (2003).

31 *L.A. Times* Editorial, *The Acjachemen’s Victory*, Dec. 27, 2018, www.latimes.com/opinion/editorials/la-ed-panhe27-2008dec27-story.html. The US Department of Commerce upheld the Commission. *Save Panhe and San Onofre*, www.cityprojectca.org/save-panhe-and-san-onofre.

32 See Samuel Garcia, *Take Action Comics*, www.takeactioncomics.org.

7. Data Collection and Analysis

The framework emphasizes the need for data collection and analysis to evaluate compliance, allow for midcourse corrections, and hold agencies accountable. Data is an important tool in advancing democratic values of diversity, equal justice, and inclusion, in and out of court. The City Project has relied on GIS mapping and demographic analyses in every organizing and legal campaign for 20 years. No data, no justice.³³

The U.S. Department of Justice and other federal agencies address the need for data collection and analysis in their regulations and guidance documents,³⁴ as well as tools developed for agency and public use. For example, US EPA's online tool to analyze environmental justice and health, EJSCREEN, includes data at the census tract level across the nation on health vulnerabilities, exposure to toxics, access to parks and recreation, and demographics based on race, color, national origin, income, and other social determinants of health. Such data is relevant to support advocacy and academic studies in many areas, including residential segregation, fair housing, and climate justice.³⁵

8. Legal Standards

The experience with park bond funds in California shows why legal standards matter. California voters have passed billions of dollars in statewide resource, park, and water bonds for almost 20 years, with empty promises to distribute the funds “equitably.” Yet people of color and low-income people throughout California disproportionately lack access to parks, beaches, and recreation areas. To address these concerns, in 2006 voters passed Proposition 84, a bond measure authorizing \$5.4 billion in public investments to improve water, parks, coastal protection, and natural resources. Prop 84 and Assembly Bill (AB) 31—implementing legislation for the proposition—defined “park poor” and “income poor” standards to prioritize the investment of \$1.3 billion in local impact

33 See UCLA Prof. Leo Estrada Civil Rights Hero, Demographer, www.cityprojectca.org/blog/archives/45750; Bill Gates, What Are the Biggest Problems Facing Us in the 21st Century?, N.Y. Times Book Review, Sept. 9, 2018, *reviewing* Yuval Noah Harari, 21 Lessons For the 21st Century National Equity Atlas Data & Methods: Technical Documentation (June 22, 2017), nationalequityatlas.org/sites/default/files/Data_and_Methods.pdf (2018); National Equity Atlas Data & Methods: Technical Documentation (June 22, 2017), nationalequityatlas.org/sites/default/files/Data_and_Methods.pdf.

34 The U.S. Department of Justice directs agencies to provide for “collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI.” 28 C.F.R. § 42.406(a). This includes, for example, “(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) The population eligible to be served by race, color, and national origin; . . . (4) [R]elated information adequate for determining whether the [program] has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination. 28 C.F.R. at § 42.406(b)(1), (2), (4). Similarly, FTA regulations address racial and ethnic data, demographic mapping, comparing benefits and burdens, public engagement, and planning. Federal Transit Administration, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients, Circular FTA C 4702.1A, chapter V (1) and V(1)(a)(2) at page V-1* (Oct. 1, 2012). *Accord*, FTA, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients, Circular FTA C 4702.1B, page IV -7* (Oct. 1, 2012); FTA, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients, Circular (FTA C 4703.1)*, pages 6, 8, 11 (Aug. 15, 2012). *Accord*, Executive Order 12898 on Environmental Justice, Sec. 3-3 (research, data collection, and analysis).

35 See US EPA EJSCREEN (2018), <https://ejscreen.epa.gov/mapper/>; US EPA EJSCREEN (2016), www.cityprojectca.org/blog/archives/43843.

funds for park, water, and coastal projects (Garcia et al., 2016).²¹ Fully 88 percent of the \$400 million in funds invested under the AB 31 standards were invested in communities that are disproportionately of color and low-income. In contrast, 69 percent of the remaining \$1 billion that were *not* invested using those standards were disproportionately invested in communities that tend to be park-rich, wealthy, and white. Standards defined in advance work. Vague commitments to “equity” or “local parks and urban greening” alone can exacerbate rather than alleviate disparities without measurable standards to back them up.³⁶

9. Access to Justice through the Courts

The NAACP Legal Defense Fund settled the historic environmental justice class action in *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority* (MTA) in 1996. The plaintiffs and class showed MTA operated separate and unequal bus and rail systems that discriminated against bus riders who were disproportionately low-income people of color. The \$2.5 billion court-ordered consent decree under Title VI and its regulations improved bus service and kept fares low for ten years. The attorneys and class relied on academic experts at UCLA and USC, and accountant Tom Rubin to demonstrate that bus was the better alternative on every measure of equity and efficiency. The victory is a “remarkable moment in American urban history,” and “it is hard to imagine a stronger team of advocates,” according to UCLA Prof. Edward J. Soja.³⁷ Civil rights attorneys continue to apply the MTA lessons through the framework in the ways described above.

10. The Framework in Action

People of color and low income people have fought to protect people and the environment applying the framework through combined organizing and legal campaigns for 20 years in the historic heart of African American L.A. They stopped a proposed power plant and garbage dump to help create Baldwin Hills Park, the largest urban park designed in the US in over a century, relying on public comments, media campaigns and Title VI and its regulations. To regulate oil drilling, they took part in the public planning process for two years, drafted their own proposed regulations, and successfully sued the County of Los Angeles and a Texas oil company, resulting in the most heavily regulated urban oil field in the nation under state environmental and civil rights laws. Under the Clean Water Act, they reached a \$2 billion settlement agreement in federal court to stop noxious odors and clean up sewer spills city wide, create parks in park poor, income poor communities of color, and create Civil Rights Park, the only park in L.A. dedicated to the Civil Rights Revolution.³⁸ The struggle continues to build the park and provide quality jobs while avoiding green displacement.

36 AB 31 is the Statewide Park Development and Community Revitalization Act of 2008, Pub. Res. Code §§ 5640 et seq. Prop 84 is the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, Pub. Res. Code §§ 75001 et seq

37 Edward J. Soja, *Spatial Justice* (2010).

38 Robert García and Ramya Sivasubramanian, *Environmental Justice for All: Struggle in Baldwin Hills and South Central Los Angeles Clearinghouse Review: Journal of Poverty Law and Policy* (2013), povertylaw.org/clearinghouse/stories/garcia.

Legal Standards of Discrimination: Intent, Impact, and Implicit Bias

Calls for “diversity, equity, and inclusion” without more are not enough to ensure equal access, antidiscrimination, and health equity under civil rights legal standards.

The U.S. Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* held that the prohibition against unjustified discriminatory impacts plays an important role in moving the nation toward overcoming a legacy of residential segregation and promoting equal opportunity for all. The disparate impact standard allows people to counteract disguised animus, unconscious prejudices, and implicit bias that may escape easy classification as intentional discrimination. The prohibition against unjustified discriminatory impacts promotes equal opportunity for all in access to health, housing, parks, beaches, transportation, jobs, contracts for diverse business enterprises, and other infrastructure and ecosystem services.³⁹ Proof of intentional discrimination is not required. Overlapping evidence is relevant to prove discriminatory impact⁴⁰ and intent in the court of public opinion, and in a court of law.⁴¹

Evidence of implicit bias is relevant to ferret out and prove intentional discrimination, as well as discriminatory impacts. According to Dean Erwin Chemerinsky of UC Berkeley Law School, “Social science has proven that much discrimination is the result of unexamined stereotypes and unacknowledged bias. Having to prove that discrimination is the result of racial animus or is intentional will allow much discrimination to evade judicial scrutiny.” Dean Chemerinsky concludes, “Challenging the outdated intent standard . . . is essential if courts are to remain the protectors of rights in our society.”⁴²

39 See *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 576 U. S. – 2015. While the facts in that case involved the Fair Housing Act of 1968, the discriminatory impact standard is analogous under Title VI regulations and Affordable Care Act section 1557. See U.S. Department of Housing and Urban Development, *Implementation of the Fair Housing Act's Discriminatory Effects Standard*, 24 C.F.R. Part 100, 78 Federal Register, 11460 (2013). Available at <https://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf> (accessed June 15, 2016).

40 There are three prongs to the discriminatory impact inquiry: (1) Whether an action impacts one group more than another - numerical disparities based on race, ethnicity, or national origin shown through statistical studies or anecdotal evidence, for example. (2) If so, the funding recipient bears the burden of proving that an action is justified by business necessity – or by an analogous public policy in the case of a government agency. (3) Even if there is evidence of business necessity, the disparities are prohibited if there are less discriminatory alternatives to achieve similar objectives. See, e.g., *Inclusive Communities* slip opinion at page 10.

41 To evaluate an intentional discrimination claim, circumstantial evidence includes (1) whether an action impacts one group more than another, including numerical disparities shown through statistical studies and anecdotal evidence; (2) a history of discrimination; (3) departures from substantive norms; (4) departures from procedural norms; (5) a pattern of discrimination; and (6) the decision maker knows the harm a decision will cause. See, e.g., *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 264-68 (1977); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); U.S. Department of Justice, Civil Rights Division, *Title VI Legal Manual* at pages 42-58 (2001). Available at <https://www.justice.gov/sites/default/files/crt/legacy/2011/06/23/vimanual.pdf> (accessed June 24, 2016). “Where gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination.” (*Hazelwood School Dist. v. United States* (1977) 433 U.S. 299, 307-308.) According to the Court in *Alexander v. Sandoval*, 532 U.S. 275 (2001), the Title VI statute prohibits only intentional discrimination, and private individuals and organizations can enforce the statute in court. Congress did not intend to create a private cause of action enabling them to enforce the discriminatory impact regulations in court. Agencies remain obligated to enforce both.

42 Amicus brief, *Collins v. Tortakson*, Case No. F075781 (Fifth appellate district California Court of Appeal 2018). The brief is available at <https://equaljusticesociety.app.box.com/s/09bq0no10umvfr5sma63khqbh5q8rn5>.

The U.S. Supreme Court in *Fisher v. University of Texas at Austin* recognized the value of diversity. Diversity promotes cross-racial understanding, ending stereotypes, preparing for an increasingly diverse society and workforce, and cultivating leaders with legitimacy in the eyes of the public. The court emphasized the need to gather, analyze, and publish data based on race, color, and national origin in order to ensure that public benefits and burdens are distributed equally and to promote racial justice and human dignity.⁴³

The Supreme Court is poised to determine the future of equal justice in the US for generations to come. This is especially important as the nation celebrates the 150th anniversary of the 14th Amendment to the US Constitution in 2018. The Equal Protection Clause protects equal opportunity and human dignity in public schools, interracial marriage, political representation, immigrant rights such as freedom from indefinite detention, a woman's right to choose, and the right to marry the person one loves. The Amendment, enacted July 9, 1868, after the Civil War, authorizes Congress to enforce its protections.

Conclusion

Combined organizing and legal strategies offer a middle ground for resisting social safety net roll backs between riots and timid supplications for justice. State and community strategies offer alternatives during a time when the president, the administration, and their supporters present an unprecedented assault on people, places, and biodiversity that is corrupting democratic governance, the rule of law, international trust, and the nature of truth itself.

⁴³ *Fisher v. University of Texas at Austin*, 579—U.S.—, slip opinion at pages 11, 14-15 (2016). While the facts of the case involved narrowly tailored race conscious admissions to promote the compelling state interest of diversity in a university, the value of diversity and the need for data are analogous in promoting health equity.



Building Diverse Coalitions and Elevating Community Voices to Achieve Energy Efficiency Equity

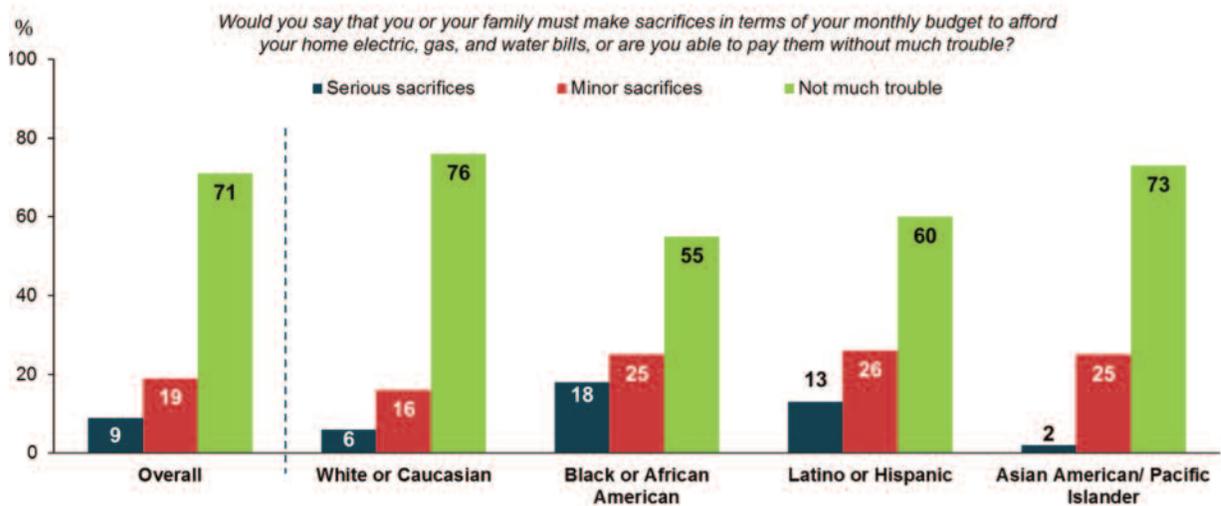
Raisa Johnson is a **Public Policy Associate** at the **National Housing Trust (NHT)**. **Todd Nedwick** is the **Housing and Energy Efficiency Policy Director** at **NHT**. NHT is dedicated to sustainable affordable housing development that reduces energy use and creates a healthier living environment for families and children. NHT and its partners- the Natural Resources Defense Council, Energy Foundation, and Elevate Energy- launched Energy Efficiency for All (EEFA). EEFA is a coalition-based initiative working in 12 states to lower the energy burden in households with limited income and make multifamily homes more affordable and healthy through energy efficiency. EEFA's national network, Network for Energy, Water and Health in Affordable Buildings (NEWHAB), broadens EEFA's impact by operating on a national level. Central to EEFA's mission is a commitment to equitable outcomes in energy efficiency policy. As discussed in detail below, the strategies employed to achieve these goals are building state coalitions, convening working groups, and elevating community voices.

Background

Renters face some of the highest energy burdens¹ in the country as a result of energy inefficient housing.² A report by the American Council for an Energy-Efficiency Economy (ACEEE) found that low-income, Black, Latino, low-income multifamily, and renter households are more likely to spend a higher percentage of their income on utility costs than their higher-income counterparts and significantly more than homeowners.³ When combined with rising rents that outstrip wage increases, people with limited incomes often make the choice between heating and lighting their home and paying for other life necessities including food, medicine, and clothes. A recent public opinion poll commissioned by EEFA corroborates ACEEE's findings. When respondents with incomes below \$40,000 were asked if they typically make sacrifices in terms of their monthly budget to afford utility bills, nearly half said yes. The poll also found that three times as many African-Americans and twice as many Latinos report making serious sacrifices to afford their utility bill as compared to white households (See Figure 1)

FIGURE 1

Public Opinion Poll Commissioned by Energy Efficiency for All, 2018



The burden of high utility bills is significant for low-income households. The median American household spends 3.5% of their annual income on energy costs. In comparison, a low-income household may spend more than twice that amount on energy at a median 7.2% of annual household income.⁴ In some areas of the country, low-income households are spending nearly one-fifth of their earnings on utility bills.⁵ Combined with high rents, the financial impact of high energy can

1 Energy burden is calculated as the total residential cost of energy as a percentage of household annual income.

2 Drehabl, A., & Ross, L. (2016, July 13). Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities. Retrieved from <http://aceee.org/research-report/u1602>

3 Ibid

4 Drehabl, A., & Ross, L. (2016, July 13). Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities. Retrieved from <http://aceee.org/research-report/u1602>

5 Ibid

be overwhelming. 80% of renters who earn less than \$30,000 per year⁶ are housing burdened, and evidence suggests that this burden is due, in part, to high utility costs.⁷ These are households that are more likely to face eviction, homelessness, and chronic illnesses. For these families, energy affordability is a crisis. The economic stress of meeting high utility bills is not born lightly. The NAACP report, *Lights Out in the Cold*, recounts the stories of people who have literally been left in the dark by utility disconnections that have led to debt, illness, and in some cases, death.⁸

High energy burden is fundamentally a question of the equitable distribution of resources. Low-income households carry the highest energy burdens because of the lack of affordable and energy efficient housing. People with limited incomes typically live in older homes that are poorly insulated and have outdated appliances. Multifamily rental housing, particularly for low-income households, has the fewest energy efficiency features than any other type of housing.⁹ The multifamily housing sector faces unique challenges that owners less likely to invest in energy efficiency including split incentives, lack of viable financing options, lack of data, and health and safety barriers. Improving the energy efficiency of aging, affordable housing would reduce the energy burden of low-income households by more than a third.¹⁰

Advocacy strategies

EEFA's advocacy relies on building sustainable state-based coalitions, engaging state agencies and utilities, and elevating the voices of community members. EEFA's strategy comprises 12 state coalitions: California, Georgia, Illinois, Louisiana, Maryland, Michigan, Missouri, Minnesota, New York, North Carolina, Pennsylvania, and Virginia. Each of the 12 coalitions is made up of a diverse set of organizations that use the coalition model as a mechanism to reach consensus on a common set of goals and priorities for energy efficient affordable housing. Engaging a wide range of stakeholders including housing, environmental, and health groups allows us to advocate for innovative policy solutions and build sustainable partnerships focused on increasing the availability of utility low-income energy efficiency programs.

EEFA aims to bring the benefits of sustainable, comfortable, and resilient housing to millions of families in need of affordable housing by serving as a crucial link between energy efficiency and housing advocates. While the demand for affordable housing continues to surpass the supply, EEFA has found that leveraging utility spending on energy efficiency for multifamily rental housing can serve as

6 The United States Department of Housing and Urban Development (HUD) considers a household to be cost burdened when the combined mortgage/rent and utilities exceed 30% of that household's monthly income. Defining Housing Affordability | HUD USER. (n.d.). Retrieved from <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-081417.html>

7 Ibid

8 Franklin, M., & Kurtz, C. (2017, March). *Lights Out in the Cold: Reforming Utility Shut-Off Policies as if Human Rights Matter*. Retrieved from https://www.naacp.org/wp-content/uploads/2017/04/Lights-Out-in-the-Cold_NAACP-ECJP-4.pdf

9 Pivo, G. (2014). Unequal access to energy efficiency in US multifamily rental housing: Opportunities to improve. *Building Research & Information*, 42(5), 551-573. doi:10.1080/09613218.2014.905395

10 Drehobl, A., & Ross, L. (2016, July 13). *Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities*. Retrieved from <http://aceee.org/research-report/u1602>. Energy efficiency is complementary of other strategies to reduce energy burden, including increasing household earnings.



an additional resource to preserve housing affordability and lower energy costs for low-income households. The project began in 2014 when the Natural Resources Defense Council, National Housing Trust, Elevate Energy, and Energy Foundation with generous support through the JPB Foundation teamed up to make affordable rental housing more efficient through reducing energy consumption, pollution, and creating healthier more comfortable living environments.¹¹ NEWHAB was established as a social impact network that would allow stakeholders across the nation to tap into the expertise of the 12 state-based coalitions.

EEFA's approach to advocating for low-income utility spending continues to produce wins. In the last four years, the project has secured nearly half a billion dollars in confirmed and estimated new funding for low-income energy efficiency programs. Much of the success of EEFA can be attributed to a dedication to coalition capacity building and elevating the voices of community members in historically marginalized neighborhoods. While we are the first to admit that we have yet to perfect any of our approaches, we hope that by sharing our experiences and learnings we can add to the current framework around energy efficiency, affordable housing, and a more equitable society.

Challenges

The biggest threat to EEFA's work remains to be potential energy efficiency and affordable housing policy roll backs that cut critical funding for low-income families. For example, in Missouri, the state legislature indefinitely halted the provision of the state's Low-Income Housing Tax Credit (Housing

11 History of EEFA. (n.d.). Retrieved from <http://energyefficiencyforall.org/about-eefa/history-eefa>

Credit) program delivering a heavy blow to developer's ability to preserve and build affordable homes. In Iowa, recently passed legislation will dramatically cut back or eliminate incentives on energy efficient upgrades and defund utility energy efficiency programs despite a 2017 energy efficiency potentials study that identifies savings opportunities of 17% in electricity consumption and 15% of gas consumption over the next decade.¹² Such measures make it more difficult for affordable housing developers to finance housing developments while also maintaining affordable rents. Furthermore, significant changes to federal housing rental assistance programs, such as imposing work requirements and lowering the cap on benefits, would also create substantial barriers to families accessing affordable housing.

EEFA has also found that the stakeholder decision making processes in many states regarding utility spending makes incorporating renter and community engagement an arduous process that requires constant attention and innovation to be successful. Thus far, EEFA's strategies have relied on our involvement in state working groups, coalition building, and creating new systems that create collaborative opportunities between EEFA and the communities it serves that continue to inform our engagement with policy makers and renters respectively. Our goal of community engagement that respects the dignity of affected people has pushed EEFA to reconsider how we approach our advocacy. We've found that often our local partners who have decades of experience on the frontlines of housing and environmental advocacy in distressed and disinvested communities are often resource-constrained and over-worked. This means that aligning our work is a slow process; however, we have found that creating deliberate spaces to collaborate and welcoming leadership from community members has been an effective means of furthering our community engagement and policy objectives.

Our Solutions

State coalitions

Recommendation:

1. *Build a diverse coalition of stakeholders who understand the local regulatory environment and local community development needs.*
2. *Designate a facilitator who can convene stakeholders, set agendas, and track progress.*

EEFA uses a state-based strategy to achieve our goal of integrating energy efficiency into affordable housing. In each state, EEFA organizes and supports a coalition that comprises local stakeholders who can inform strategy based on their unique understanding of local barriers and opportunities. Allowing each state coalition to look and operate differently opens space to engage historically marginalized stakeholders such as affordable housing residents, community organizers, and local environmental justice advocates. The nature of the coalition also requires that all energy efficiency stakeholders understand and advocate for affordable housing and vice versa.

¹² Iowa Bills Threaten to Roll Back Energy Efficiency, Putting Consumer Savings at Risk. (2018, February 22). Retrieved from <http://aceee.org/blog/2018/02/iowa-bills-threaten-roll-back-energy>

For example, the Virginia EEFA coalition which operates under Virginia Multifamily Energy Efficiency Coalition (MFEEC) brings together a large and diverse set of stakeholders around low-income energy efficiency. The coalition holds 28 members and coordinates individual organizational activities to push more equitable policy outcomes and program design and delivery improvements. MFEEC covers the spectrum of energy efficient stakeholders. In 2017,



MFEEC coordinated efforts across housing, environmental, energy, and low-income consumer advocates to elevate the importance of energy efficiency in multifamily affordable housing and provide recommendations to key decisions makers. MFEEC was pleased that Virginia's Grid Transformation and Security Act, passed in 2018, increased low-income energy efficiency investment by Dominion from \$6 to \$13 million per year. MFEEC will remain an active stakeholder in the implementation of the bill to maximize benefits for residents of multifamily affordable housing, and are continuing to work to maximize the benefits of these investments.

State working groups

Recommendation:

1. *Develop mechanisms and procedures within working groups that allow low-income housing residents to have a substantive voice in decision making processes.*
2. *Ensure that multifamily tenants and affordable housing resident interests are well-represented when creating policy within low-income working groups.*
3. *Affordable housing is complicated. Ensure that there is a member of the working group who has the expertise to weigh the impact of policy on affordable housing owners, developers, and tenants.*

Energy efficiency working groups are collaborative efforts that bring together public and private stakeholders to develop policy solutions. While the makeup of working groups varies widely, the main function of these groups is to align expertise around a common set of goals. In California, EEFA members were appointed to two new state-mandated working groups: the Disadvantaged Communities Advisory Group and the Low-Income Oversight Board (LIOB), which were approved by the California Public Utilities Commission (CPUC) in response to new legislation and an initiative within the state legislature. The Disadvantaged Communities Advisory Group newly appointed members include representatives from the NAACP, the Tuolumne Me-Wuk Tribal Council,

Earthjustice, GRID Alternatives, and the Sacramento Housing and Redevelopment Agency. Members of LIOB include representatives from EEFA member NRDC, Coalition for Economic Survival, California American Water and others. The LIOB was established by the state legislature to both advise the CPUC on low-income electric and gas challenges facing customers and to serve as a liaison for the CPUC to low-income ratepayers and representatives. EEFA's position on these boards allows them to push renter issues to the forefront of their policy priorities.

In some states, EEFA convenes the working groups. The Missouri EEFA coalition launched the Missouri Energy Efficiency Advisory Collaborative (MEEAC) Low-Income Work Group. The MEEAC Low-Income Work Group's mission is "to maximize the benefits of, and access to, energy efficiency for Missouri's low-income households." The group quickly prioritized six key areas, including coordination among key affordable housing stakeholders, coordination of weatherization and utility programs, and addressing walk-away health and safety issues that may impede utilities' abilities to deliver energy efficiency to multifamily properties. While the outcomes from the collaboration have yet to be fully realized, EEFA believes that intentional engagement of impacted communities is central to creating equitable policy.

EEFA recognizes that there are substantial barriers that keep tenants and other community members from participating in low-income working groups in most states. Time constraints keep people with jobs from attending, policy and technical jargon creates a knowledge barrier that can be difficult to surmount, and, many times, tenants are simply not invited to table. In Minnesota, the EEFA supported Minnesota Multifamily Affordable Housing Energy Network (MMAHEN) created its own working group and invited both state agencies and tenants to participate. While the outcomes of this initiative have yet to be fully realized, EEFA continues to push for more and deeper engagement between policy makers and low-income households.



Elevating the Voices of Community Members

Recommendation:

1. *An explicit commitment to engage consumers is often a necessary and first step to ensuring the community voices are heard. There are many barriers that preclude renter participation in working groups including a lack of time, resources, and knowledge. Creating feedback loops that are informed by community engagement requires that advocates commit to lowering these barriers. Create a plan to engage and build meaningful relationships with community members that incorporates their feedback into the work and avoids transactional or exploitative relationships.*

2. *Fund community-based organizations that will need to build capacity to collaborate with your project.*
3. *Commit to understanding the short and long-term needs of the community.*

In 2017, NEWHAB created an Equity Manifesto as a public commitment to ensuring that NEWHAB's purpose and impacts were quantifiably socially equitable. As a national social impact membership network, NEWHAB grew out of the desire of EEFA's four core national partners to both broaden EEFA's engagement outside of our 12 funded state coalitions and to address issues that inextricably linked with energy and housing including water, health, and other social indicators of well-being. Creating the Equity Manifesto was an iterative process that not only solicited feedback from NEWHAB members, but also what NEWHAB saw as crucial partners in the social justice and environmental justice communities.

The purpose of the NEWHAB's Equity Manifesto is to both define the network's vision of equitable systems change in affordable housing and to serve as a basis for an organization-wide understanding of equity and racial justice. Along with setting out an equity framework for the organization, the manifesto also prescribes a series of actions to "collectively advance [NEWHAB's] vision." This series of actions recognizes that the manifesto is only the first step and that a real and sustainable commitment to equity requires processes and follow through. The actions outline three commitments:

1. **Courageous Discovery:** The scarcity of housing that is healthy, affordable and sustainable results from an economy defined by massive income and wealth inequality. The dominant cultural norms uphold a system of haves and have-nots. We are committed to confronting our own individual, organizational, and industry-wide actions and beliefs to root out inequitable impacts.
2. **Listening to Understand:** We aim to learn the effective solutions directly from underserved communities. We are committed to incorporating input from underserved community members in a fashion that supports the dignity of all.
3. **Partnering to Effect Change and Uplift Communities:** Community-driven solutions and policy initiatives will drive our practice of partnership, which we will demonstrate via our time, resources, support and solidarity.

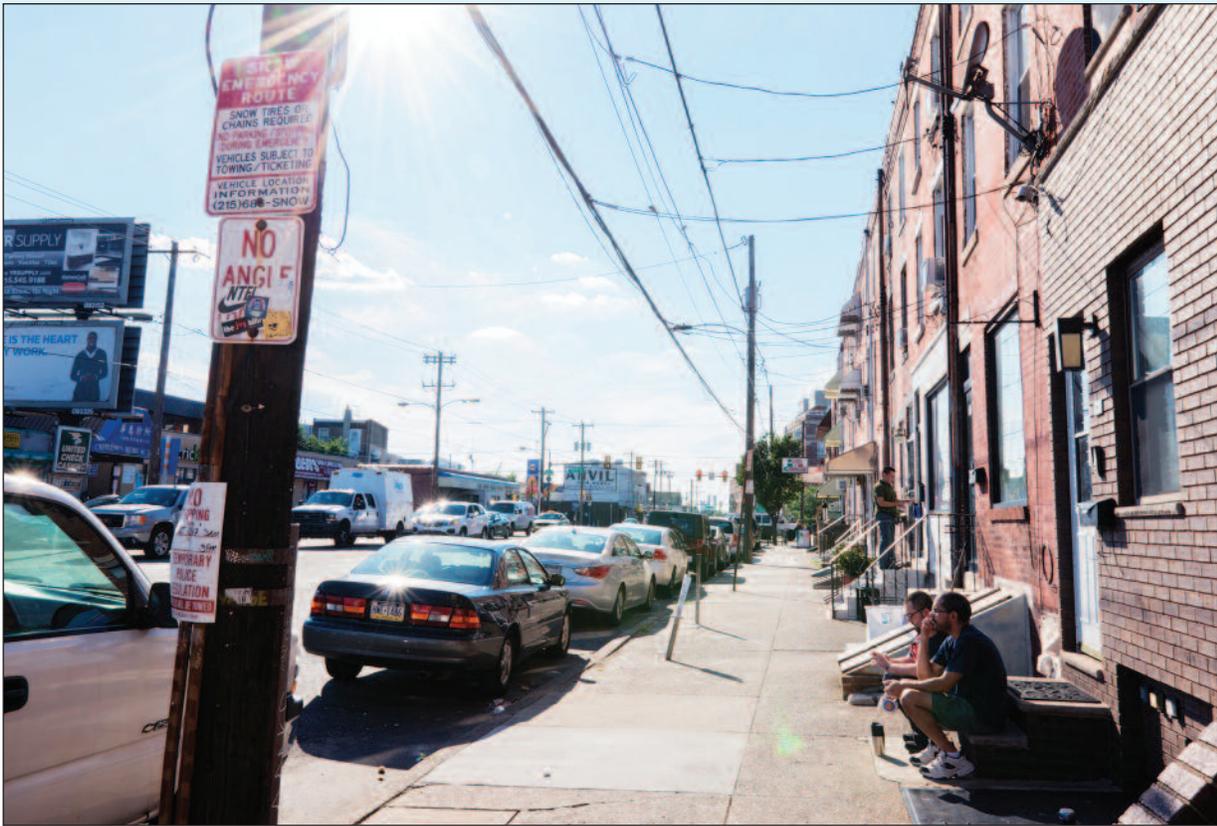
States coalitions are also dedicated to elevating community voices. EEFA Georgia operationalizes their commitment to engagement by gathering impacted community members to discuss energy affordability. The GA EEFA coalition consists of a diverse group of advocates working on energy efficiency, renewable energy, consumer rights, affordable housing and equity (Enterprise Community Partners, Georgia Watch, Groundswell, National Housing Trust, Partnership for Southern Equity, and Southface).

In 2017, EEFA GA hosted its first Energy Equity Forum in Camilla, Georgia with a goal of facilitating a discussion with community members around high utility bills, barriers to energy efficiency, and

potential solutions. The Energy Equity Forum not only engaged community members, but also brought in utility representatives who were able to hear feedback directly from a consumer class that is often overlooked. EEFA GA educated participants on energy assistance programs including LIHEAP and the Department of Energy's Weatherization program and low cost/no cost energy efficiency measures that could be implemented to reduce energy costs. The coalition intentionally focused on areas outside of the metropolitan region of Atlanta because local advocates identified these areas as being particularly underserved in regard to energy efficiency. EEFA GA held a second forum in 2018 in Columbus, GA, and other EEFA states are planning similar forums for 2019.

The Future

There is still plenty of work to be done to ensure that all people are living in comfortable, sustainable, and resilient communities. EEFA will continue to pursue place-based solutions to build energy efficient housing and create processes that move towards equitable outcomes. As EEFA embarks on its next phase of work, state coalitions are working with utilities and state agencies to incorporate healthy building materials into energy efficiency measures and push public service commissions to fund low-income water and gas savings programs along with electricity. Increasing and preserving the affordable housing stock will always be the central focus of EEFA's work. The project will continue to advocate for the expansion of federal and local financing programs that incentivize developers to invest in affordable housing.



What Eastwick Wants: Transforming the Environmental Justice Legacy of Urban Renewal

Amy Laura Cahn is the ***Interim Program Director of Healthy Communities & Environmental Justice*** at the **Conservation Law Foundation**.

Introduction

On July 26, 2018, residents and stakeholders of Philadelphia's Eastwick neighborhood gathered for the final meeting of the Lower Eastwick Public Land Strategy. Guiding the future of 200 acres of public land, this new plan is intended to finally render obsolete the 1951 Eastwick plan, which set this country's largest urban renewal project into motion, and hopefully will set a new path for Philadelphia's most vulnerable floodplain community.

1 Amy Laura Cahn is the Interim Program Director of Healthy Communities & Environmental Justice at the Conservation Law Foundation. From 2012-2017, she was legal counsel to the Eastwick Friends and Neighbors Coalition, while a staff attorney at the Public Interest Law Center in Philadelphia. This article builds upon content from a prior article by this author. See *On Retiring Blight as Policy and Making Eastwick Whole*, 49 HARV. C.R.-C.L. L. REV. 450 (2014).

Director of the Philadelphia Redevelopment Authority (PRA) Greg Heller opened the evening, saying “this is just the beginning” of an open and transparent redevelopment process. Eastwick Friends and Neighbors Coalition President and longtime resident Earl Wilson echoed that “all of the agencies will be with [Eastwick] for the long haul. We are not going back to 1952. We are going to be able to generate this village in the city.” But it was Pastor Darien Thomas who set the tone. “I was skeptical,” he said. “I represent people from six generations [in Eastwick] who have been dumped on . . . promised year after year, decade after decade. But I have been patient. I know we are going somewhere. And it’s been fair. Everyone has their opinion, but it’s been fair.”

Eastwick Blighted, Again

In 2006, the Philadelphia City Planning Commission (“PCPC”) undertook a blight recertification of Philadelphia’s Eastwick neighborhood—fifty-six years since PCPC’s Eastwick urban renewal plan called for the seizure of over 2300 acres of land and displacement of over 8000 people from an intact set of interracial communities called Elmwood, The Meadows, the Lowlands, Tinicum, Little Holland, and Clearview.

To justify recertifying Eastwick as blighted, PCPC’s report pointed to Eastwick’s 162 acres of vacant land—most of it undeveloped green space—and the trash dumping occurring on that land as evidence of “unsafe, unsanitary, inadequate or overcrowded conditions” and “economically or socially undesirable land use[s].”² That report relied on remarkably circular logic. Eastwick’s undeveloped land—publicly held by the PRA and constrained by a developer’s fifty-year-old purchase option³—remained one of the many legacies of urban renewal’s broken promises. Eastwick residents had neither authority nor resources to control the future of that land or even mitigate accumulating debris. The blight certification itself, while less of a legal gateway to eminent domain than fifty years prior, continued to subject the neighborhood to stigma and leave open the possibility of an assertion of police power—to condemn and seize any parcel within the bounds of the neighborhood.

Missing from the blight recertification document was an assessment of Eastwick’s assets as a quiet and green home to many long-term residents. Or any description about the cumulative environmental and health burdens carried by those same residents. One might think city officials knew an entirely different Eastwick than its residents. Because, at that point, they did.

The Blighting of Eastwick

Nestled between the Schuylkill and Delaware Rivers, Eastwick is bordered by the Philadelphia International Airport to the south, this country’s oldest and largest oil refinery to the east, and the John Heinz National Wildlife Refuge and Darby and Cobbs Creeks to the northwest. Pre-urban renewal Eastwick was, in some ways, an environmentally vulnerable place for the neighborhood’s predominately working class, immigrant, and African American residents. It was also a well loved

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- 2 PHILA. CITY PLANNING COMM’N, EASTWICK BLIGHT RECERTIFICATION (Mar. 2006), available at <http://www.phila.gov/CityPlanning/plans/Blight%20and%20Redevelopment%20Reports/eastwickbr.pdf>, archived at <http://perma.cc/ZW4Q-UMLJ>.
 - 3 *Redev. Auth. v. New Eastwick Corp.*, Nos. 2087 APRIL TERM 2003, Control 102344, Control 102318, 2005 WL 705976 (Pa. Ct. Com. Pl. Mar. 23, 2005), *aff’d*, 894 A.2d 830 (Pa. Super. Ct. 2005).

and “knitted in”⁴ community, with vibrant and walkable commercial corridors amidst areas of farmland and marshland and adjacent to the wilderness that would eventually become Heinz Refuge.

Under Title I of the Housing Act of 1949, a blight designation was a first step in moving people and taking their land for redevelopment—most often from communities of color and immigrant communities. The 1950s planners who “blighted” Eastwick justified that decision with evidence of a surfeit of tax delinquent and undeveloped property, a lack of sewer and water infrastructure, and a combination of environmental risks, including flooding, toxic dumping, and heavy industry. The blight designation provided municipal officials access to major federal grants, gave one developer—the New Eastwick Corporation, later absorbed by the Korman Corporation—development rights to enormous swaths of land, and invited Philadelphia’s city planners to experiment with planning a “city within a city” from scratch.⁵

In 1950, power over land and people came with no corresponding accountability to the health and well-being of residents or the sustainability of the natural environment.

Rather than developing transformative solutions aimed at improving an intact neighborhood, the city, PRA, and Korman took a slash and burn approach. Dr. Mindy Fullilove chronicled this story and its impacts on her friend David Jenkins and his fellow Eastwick residents in her 2004 book *Root Shock: How Tearing Up City Neighborhoods Hurts America, And What We Can Do About It*. In *Root Shock*, Dr. Fullilove described the trauma of displacement and “rupture of community” for countless uprooted by urban renewal. Eastwick community leader Terry Williams says investment directly into the neighborhood could have shifted the economic status of the community. Instead, as a child, he watched opportunity disappear, replaced by devastation as PRA dismantled the neighborhood block by block. The shock still reverberates. Sixty years later, current Eastwick resident Gloria Thomas has mourned that her “grandmother was so upset about it, she up and died.”⁶ Over time resettled and new residents moved into a “new Eastwick,” only to confront continually compounding environmental hazards. Korman constructed homes on insufficient pilings and whole blocks starting to sink into the ground, with little to no recourse for residents. The city and surrounding institutions and businesses poured municipal, industrial, and hospital waste, incinerator ash, and sewage sludge into a sixty-five-acre Clearview Landfill. Getting that property listed as a Superfund site was itself a forty-year battle; meanwhile Korman built homes and the city built a park adjacent to the site. Air quality continued to be of concern, as the neighborhood abuts the Philadelphia International Airport, I-95, and the largest oil refinery on the eastern seaboard. And the flooding of this filled marshland only worsened over time, with development and the landfill constraining creek flow and risks increasing from both the Schuylkill and tidal Delaware Rivers.

4 A FIELD OF WEEDS, Part I, 3:03 (EKO Productions 1989), available at <http://eastwickfriends.wordpress.com/mediapress/a-field-of-weeds/>, archived at <http://perma.cc/S3ZP-ATW5>.

5 Daniel J. Cummins, Jr., Eastwick: A City Within a City, REALTOR MAG. 9, 9 (1959); Guian A. McKee, Liberal Ends Through Illiberal Means: Race, Urban Renewal, and Community in the Eastwick Section of Philadelphia, 1949–1990, 27 J. URBAN HIST. 547 (2001).

6 Samantha Melamed, Back to the Future, CITY PAPER (June 13, 2012), <http://citypaper.net/article.php?Back-to-the-Future-13313>, archived at <http://perma.cc/Z495-AHNY>.

Despite these intractable neighborhood issues, the 2006 blight certification did nothing to change the circumstance for residents. Rather, it maintained the status quo of urban renewal and retained power and control over land within public and corporate interests.

Urban Renewal Redux

In April 2012, two residents stumbled on surveying activity at the largest undeveloped parcel in Eastwick, a parcel that borders several neighborhood streets and Heinz Refuge. Since the 1950s, this 128-acre parcel remained untouched and overgrown, as a quiet buffer for the neighboring cul-de-sac and a de facto extension of Refuge habitat. Eastwick residents Leonard Stewart, Terrance Johnson, and others soon discovered that over fifty years into their purchase option, Korman had proposed to rezone thirty-five acres to build 722 units of moderate-income multifamily rental housing and over one thousand parking spaces.

On June 12, 2012, over 100 residents and supporters of the Refuge mobilized to attend the rezoning hearing. Resident upon resident stood and spoke against the rezoning. Korman's proposal threatened to disturb the peace and quiet of existing residents, increase density, and endanger fragile habitat. But this was not at all a case of "not in my back yard." Residents truly wanted to right the wrongs of an unjust and unsafe past. They provided context for and evidence of Korman's broken promises and the failures of PRA to fully implement the 1951 urban renewal plan. They expressed betrayal that PRA had continued to re-up Korman's development rights for decades, in the face of inaction and with no community input. Finally, numerous residents testified about their fears that the proposed plan would exacerbate their flooding and put new residents in harm's way.

Leo Brundage lives on Saturn Place; he and his neighbors get hit first when rainstorms come. In 1999, Hurricane Floyd, Cobbs Creek jumped its banks and a wall of water inundated the whole neighborhood. Six feet of water filled Leo's two-story home. Since then, his home has been flooded more than seven times. Brundage came to City Hall in June and again in October of 2012 to tell Councilmembers about the post-traumatic stress he and his neighbors experience, as they rush to protect their homes each time it rains. One city councilwoman spoke of the "despair" flooding had been causing Eastwick families since "forever."⁷ In stark contrast, city's Deputy Water Commissioner stepped forward to testify that, while the city was investing millions into a proactive approach to stormwater management elsewhere in the city, he did not know the scope of flooding in Philadelphia's most vulnerable floodplain community, nor of a plan to address it.

Three hours of testimony revealed with how little regard the city, PRA, and Korman had treated Eastwick over time, leading up to actions that had set the rezoning itself in motion. In a closed-door negotiation, the city and PRA had agreed to support all of Korman's zoning and permitting needs in exchange for gaining back rights to a 93-acre parcel for airport development and settling litigation over another parcel entirely.⁸ Eastwick stakeholders were not even on notice that this deal was in

7 Hearing on Bill No. 120418 Before the Rules Comm., Phila. City Council 405-08 (June 12, 2012) (statement of Councilwoman Blondell Reynolds Brown).

8 In re Condemnation by City of Philadelphia, 981 A.2d 391, 394 (Pa. Commw. Ct. 2009); Settlement Term Sheet, In re Condemnation by City of Philadelphia, No. 2397 (Phila. Ct. Com. Pl. Dec. 13, 2011).

the works. When the prior city council president had introduced the rezoning bill, her view had been that there was neither need nor time for notice or community participation on the matter. The city just needed City Council to pass the rezoning bill; if not, the settlement negotiations would be null and void.

Elected representatives heard the protests of community stakeholders and put the brakes on development. Citing a need for more community input and information about flooding, Eastwick's brand-new District Councilman Kenyatta Johnson asked to table the rezoning bill. He and then-Councilman, now Mayor, Jim Kenney called for a hearing to investigate the flooding and the efforts to improve stormwater management in Philadelphia. Some months later, Councilman Johnson stood before residents and stated that "the community has spoken . . . loud and clear," apologizing that he had not initially heard residents' concerns and committed to holding the rezoning bill until he could be assured of broad community support.⁹

Visibility, Relationships, and Power

The June 12 hearing was a watershed event in the movement towards greater transparency regarding development and the larger conditions in Eastwick. Out of this initial fight, Eastwick Friends and Neighbors Coalition (EFNC) was born, bringing together residents and supporters of Heinz Refuge around an environmental justice and sustainability mission. EFNC's work built on past advocacy of the HUD-created Eastwick Political Action Committee and dovetailed with very current struggles to address the sinking homes, the remediation of the Superfund site at Clearview, and illegal dumping. EFNC took the issue of catastrophic flooding head on, educating and lobbying local, state, and federal officials, galvanizing support from the Army Corps of Engineers and sounding the alarm about the impact of rising sea levels on the tidal Delaware and the rollback of flooding insurance subsidies for the over one thousand households in the 100-year floodplain.

Going into the rezoning and flooding hearings, city officials kept asking residents, "what does Eastwick want?" The underlying question was "what will it take for residents to go away?" But, at the hearings and ever since, Eastwick has answered the question as *asked*. Repeatedly, residents laid bare the foundational inequity of urban renewal, with its compounding legacies of displacement, disenfranchisement, disinvestment, health and financial risk, and historical trauma. And Eastwick organized, building visibility, relationships, and power and bringing a set of core principles to policymakers at every level of government:

- Be transparent and include us in the process.
- Acknowledge the history and trauma of past and current wrongs.
- Address the broken promises of urban renewal.
- Stop making us unsafe and provide us with resources to improve our health.
- Invest in the long term economic and environmental health of our neighborhood

9 Kellie Patrick Gates, Councilman Johnson Says He'll Withdraw Bills Korman Needs to Build 722 Apartments in Eastwick, PLANPHILLY (Nov. 20, 2012), <http://planphilly.com/articles/2012/11/20/councilman-johnson-says-hell-withdraw-bills-korman-needs-build-722-apartments-eastwick>, archived at <http://perma.cc/D6J7-RL3H>.

More tangibly, Eastwick residents demanded that the city and PRA make Korman go away, invest in a planning process, and address catastrophic flooding in the face of climate change.

A New Era?

On December 23, 2015, Eastwick residents packed a small conference room at Philadelphia's 1234 Market Street to watch PRA board vote to buy back Korman's purchase option and terminate the urban renewal agreement. The resolution passed by PRA also granted a four-year purchase option to the Airport—no small thing. However, residents' interests were safeguarded in two ways. First, transfer of land was subject to City Council approval—and residents had built significant Council support. And second, the Airport's option could only be asserted upon completion of a planning process—Eastwick's first since urban renewal and the first ever to include stakeholder participation. Eastwick residents had been building toward this moment for three and a half years—and many decades.

In public conversation shortly following the PRA resolution, PRA's executive director Brian Abernathy, now First Deputy Managing Director of the City of Philadelphia, acknowledged that the agency had “made a reputation for pushing black folks out for white folks[.]” Abernathy shared perspective on PRA's past acts, stating that “[c]ondemnation, at its very heart and soul, is traumatic. . . and the government has done a generally poor job in recognizing that trauma and the emotions.”¹⁰ Though these were not statements made on behalf of the city, Abernathy's words and the investment in the buyout and planning signaled a new approach for Eastwick.

Neither the road to the planning process nor the process itself have been without contention. First, residents had to fight to secure adequate funding for the process itself. Next, came the need for a steering committee populated by community representatives and a voice in selecting the planning team, which ultimately included Dr. Fullilove and her team at University of Orange, as well as Philadelphia based planning firm Interface Studio. Residents fought to keep three out of four Eastwick's public schools open. When that failed, they fought against a quick sale and for a commitment to include in the planning process a 40-acre school property, site of both Pepper Middle School and the historic Wolf School, which had educated generations of Eastwick residents. They fought to ensure that flooding remained front and center for every level of government—resulting in the city and Army Corps of Engineers conducting a series of flood studies that laid critical groundwork for planning. And, sometimes, residents struggled amongst themselves, a demonstration of the competing priorities that emerge from scarce resources and significant need.

At the same time, the planning process has shown how much Eastwick residents have taught those coming into the neighborhood from the outside. The first step in the process involved creating a set of guidelines for future development, reflecting what residents have been asking from policymakers, all along:

10 Marielle Segarra, In Philadelphia, a discussion about urban renewal and the 'trauma' of eminent domain, WHYY website (April 8, 2016) available at <https://whyy.org/articles/in-philadelphia-a-discussion-about-urban-renewal-and-the-trauma-of-eminent-domain/>.

- Honor Eastwick’s rich and complex history
- Involve the community and respect its neighbors
- Cultivate a safe, stable, and healthy neighborhood
- Work to heal the environment (and not make any of the issues worse)
- Celebrate Eastwick’s natural setting
- Provide sustainable access to opportunity and nurture our youth
- Build community ties and foster diversity

Thus, the process has been rooted in understanding Eastwick’s past, a requirement spelled out in PRA’s scope of work for the plan. The process has been transparent, as the planning team “shared information and data, even when they didn’t know what to do with it,” according to Interface principal Scott Page. The process returns to the original unfulfilled promise of the urban renewal plan. In 1951, the city blighted the neighborhood to create a “city within a city,” without thought to investing in its people or the natural environment. Today’s plan attempts to catalyze a “village in the city,” investing in senior homes for an aging community, dismantling physical barriers to connection—including re-establishing an old street erased by urban renewal—and creating spaces for gathering and commerce—by re-establishing walkable commercial corridors and renovating the old Wolf School for a community and job training center. Finally, though never mentioning climate change, the plan begins to grapple with the challenges of a frontline floodplain community.

Yet, some old patterns persist. One prominent recommendation of the plan is to redevelop the thirty acres closest to the Eastwick train station for light industrial uses. While a far cry from the 93 acres originally allocated for unspecified Airport use in 2012, this remains of concern. Like most of Eastwick, these thirty acres lie within the 100-year floodplain, requiring the land be filled and raised several feet to the base flood elevation. The environmental implications for surrounding residents and the Refuge remain unclear. In some ways, developing this parcel harkens back to the Eastwick urban renewal plan, through which the city sought to drive both residential and industrial development by filling in marshland. It also evokes the 2006 blight designation, which remains in place and relies on perception of this land as “vacant”—lack of development signifying economic undesirability—as opposed to green space or flood buffer. Finally, this parcel offers a not insignificant opportunity for PRA to recoup the financial hit it took to buy out Korman.

All the mechanisms were in place to pave the way for Korman to proceed apace. Eastwick residents challenged those mechanisms and gained new ground. PRA has pushed its organizational boundaries to face its history, invest in inclusive process, and prioritize community connection and sustainability in recommended land uses. The people representing the entities long in control of Eastwick’s land now know the neighborhood through the eyes of residents. And residents and policymakers know each other by name. But competing priorities remain. Within the context of this struggle, does Eastwick ultimately get what Eastwick wants?

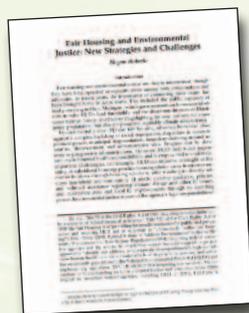
With so much at stake, is good process enough? Revitalization of Eastwick relies on investment. Community residents do not—yet—have the control of land or resources to put them on equal

footing with those who do. Shouldn't they? As the plan moves to implementation, residents will fight to make certain that those with the capital in hand adhere to all the principles at the heart of the plan—starting with understanding Eastwick's history. But will redevelopment simply represent a more inclusive urban growth machine or is this a step toward something transformative? How will the plan result in tangible redress or redistribution for a disinvested and marginalized community? Can investment into Eastwick eliminate the inequities and risks put in place and perpetuated through urban renewal? And what are the long-term rights of Eastwick residents to control future of their village within the city?

Related Publications from PRRAC

The Call for Environmental Justice Legislation: An Annotated Bibliography

(PRRAC Research & Advocacy Guide, July 2018)

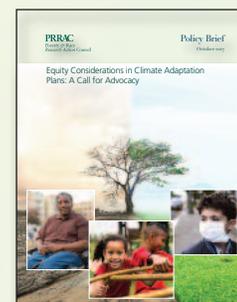


Fair Housing and Environmental Justice: New Strategies and Challenges

(Journal of Affordable Housing and Community Development Law, January 2018)

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