THE POWER OF COMMUNITY ACTION: ENVIRONMENTAL INJUSTICE AND PARTICIPATORY DEMOCRACY IN MISSISSIPPI

INTRODUCTION

The environmental justice movement seeks, on a fundamental level, to provide clean, healthy, and safe living conditions for all, regardless of race or socioeconomic status. Rose Johnson, a former chair of the Mississippi chapter of the Sierra

Club as well as a homeowner battling water contamination and wetland destruction in her neighborhood in North Gulfport, Mississippi, has described her quest for environmental justice as a "fight[] for our God-given right to have clean water, clean air, good schools, good homes . . . . [t]o make [our neighborhood] a healthier and cleaner place to live . . . . [n]ot just for my community, but for all minorities and poor people."[1] Johnson's words demonstrate that the environmental justice movement, at its heart, is working to guarantee a basic and fundamental right for all of society—the right to live, work, and play, free from the pervasive presence of toxic pollutants.[2]

For the past three decades, the movement has consistently worked toward eliminating the disproportionate exposure of minority and low-income communities to toxic risks and hazardous conditions. In 1982, protestors in Warren County, North Carolina, brought national media attention to the siting of a toxic waste landfill in a predominantly black area of the state.[3] From that point forward, local activists and community leaders became increasingly more vocal and organized in terms of promoting community awareness of contaminated and hazardous conditions.[4] Specifically, the public has turned to protesting unjust conditions in their areas, holding community meetings and attending public hearings regarding contaminated properties,

---

[1] Janisse Ray, *Stopping Developers with an "African Drumbeat,"* SIERRA MAGAZINE, May/June 2004, *available at* http://www.sierraclub.org/sierra/200405/profile.asp.

[2] *See generally* PATRICK NOVOTNY, WHERE WE LIVE, WORK AND PLAY: THE ENVIRONMENTAL JUSTICE MOVEMENT AND THE STRUGGLE FOR A NEW ENVIRONMENTALISM 1-9 (2000).

[3] *See generally* LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 19-33 (2001); Charles Lee, *Beyond Toxic Wastes and Race, in* CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 41, 49 (Robert D. Bullard ed., 1993); Robert D. Bullard & Beverly Wright, *Disastrous Response to Natural and Man-made Disasters: An Environmental Justice Analysis Twenty-Five Years after Warren County*, 26 UCLA J. ENVTL. L. & POL'Y 217, 221-24 (2008).

[4] *See* Eileen Gauna, *The Environmental Justice Misfit: Public Participation and the Paradigm Paradox*, 17 STAN. ENVTL. L.J. 3, 8 & n.15 (1998). "[E]nvironmental justice activists appeared on the environmental protection scene, opposing industrial practices, and criticizing conventional environmental organizations and environmental protection agencies as racist and classist. They argued that privileged white people systematically receive the benefits of environmental protection while poor people of color systematically incur the environmental risk." *Id.* at 8 (internal citations omitted).

advocating for legislative changes, and even initiating lawsuits to remedy the hazardous conditions caused by environmental risks.[5]

Though President Clinton issued Executive Order 12,898 in 1994 to require federal agencies to consider issues of environmental justice,[6] proponents of the movement have yet to push through environmental justice legislation at the federal level.[7] Several states, however, have issued proclamations or enacted laws promoting community awareness and equity in environmental decision-making. In the absence of federal and state laws specifically governing instances of environmental injustice, affected communities, including several in Mississippi, must generally turn to litigation in order to see any meaningful resolution of the toxic conditions and environmental hazards that negatively impact the places where they live, work, and play.[8]

Focusing on two Mississippi communities, this Article examines potential remedies available to local activists seeking equal access to home and work environments not overburdened by environmental risks or toxic conditions. Part I of this Article examines the difficulties of defining precisely what is meant by *environmental justice*, which encompasses the ideas of *environmental racism* and *environmental equity*. Moreover, the idea of the environment as more than simply a community's physical and natural surroundings is central to further defining the goals of the environmental justice movement. Though the debate over terminology may seem futile or unimportant, exacting a more precise definition of *environmental justice* is essential to understanding the mission of the environmental justice movement

---

[5] *See id.* at 12-13 ("Since these initial protests, residents from low-income communities and people of color have become increasingly self-organized and vocal in a wide range of environmental law settings. On the local level, they attend public hearings concerning polluting facilities and contaminated properties. They also litigate under civil rights laws to address disparity in environmental protection and have begun to participate in private enforcement efforts through citizen suit provisions." (internal citations omitted)).

[6] Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

[7] *See* Faith R. Rivers, *Bridging the Black-Green-White Divide: The Impact of Diversity in Environmental Nonprofit Organizations*, 33 WM. & MARY ENVTL. L. & POL'Y REV. 449, 462 (2009) ("To date, however, the movement has been unsuccessful in efforts to shepherd environmental justice legislation through the Congress.").

[8] *See generally* NOVOTNY, *supra* note 2.

as well as encouraging community involvement in furthering this movement's goals.

Part II of this Article provides an overview of the environmental justice movement and highlights key investigative findings establishing the fact that low-income and minority communities do bear a higher burden in terms of environmentally hazardous conditions and toxic surroundings. Part III examines two Mississippi communities facing previous and ongoing environmental hazards that resonate with environmental justice concerns. The first of these communities, Turkey Creek, is predominantly black and located just outside of Gulfport. Turkey Creek residents have, for the past decade, battled developers seeking to fill the wetlands adjacent to their community, which would worsen area flooding and risk the destruction of neighborhood homes, schools, and churches. The second, Eastmoor Estates, is a low-income housing community located in the Mississippi Delta. For several years, Eastmoor residents have been contending with the property owner's unwillingness to repair the complete failure of their sewage system and subsequent contamination of their yards and homes. Turkey Creek and Eastmoor Estates are currently at different stages in their quest to remedy the environmental hazards affecting their neighborhoods—Turkey Creek residents have succeeded, both in and out of court, with various initiatives to protect their wetlands from succumbing to commercial development, whereas Eastmoor Estates has recently filed suit seeking a permanent injunction against Glenn Miller—the community's owner—to require him to repair the deteriorated sewer system.[9]

Part IV examines potential remedies for communities adversely affected by hazardous environmental conditions. Part IV-A considers the possibility of remedying instances of environmental injustice at the legislative level, while Part IV-B contemplates the same possibility at the community level. Part IV-C addresses the viability of litigation, determining that the decision to bring the environmental justice complaints out of the community and into the courtroom is not always in the community's best interest. In order for a community to

---

[9] *See infra* Part III.

successfully fight instances of environmental injustice, residents cannot always rely on litigation alone.[10] Problems inherent in the legal system often hinder the justice that these affected communities seek and, perhaps more importantly, require in order to have healthy, clean, and safe surroundings.[11]

This Article concludes that these Mississippi communities would be in the most ideal position to remedy environmental injustice by first organizing themselves at the local level to combat inequities. By doing so, the community will be better prepared to overcome the political barriers that often prevent low-income and minority environmental justice plaintiffs from seeing success in the courtroom should litigation prove necessary to provide an ultimate resolution to the community's environmental burdens. As in the case of the Turkey Creek community along the Mississippi Gulf Coast, litigation combined with effective community action has proven successful in preserving the environmental integrity of the historically black neighborhood. The key to Turkey Creek's numerous victories over developers seeking to destroy the neighborhood's protective wetlands has been combining legal efforts with the community's sense of identity and commitment to preserving its historic vitality and independence from neighboring Gulfport. Turkey Creek's successes can be a powerful educational tool for other local communities, including Eastmoor Estates, as residents consider pursuing litigation as a remedy for the environmental injustice that threatens their neighborhoods, homes, workplaces, and schools.

I. FROM ENVIRONMENTAL RACISM TO ENVIRONMENTAL JUSTICE

Though the inherent unfairness of the circumstances in Warren County, North Carolina is clear, pinpointing the terminology central to the resulting social justice movement, and thus defining the movement's ultimate goals, has proven

---

[10] *See* Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 648-49 (1992) [hereinafter Cole, *Empowerment*] ("Poor people and people of color also understand that most problems faced by their communities are not legal problems, but political and economic ones . . . . [Therefore, u]sing a legal strategy, rather than a political one, would likely fail these communities . . . ." (internal citations omitted)).

[11] *See id.*

difficult.[12] The overarching theme in the fight to promote *environmental justice* is to protect racial minorities and low-income communities from an undue exposure to toxic conditions.[13] Over the past several decades, proponents of environmental justice have been dismayed to find that the government's response to their movement has, in actuality, been to advance the policy goal of *environmental equity*.[14] The Environmental Protection Agency has defined environmental equity as "equal protection from environmental hazards for individuals, groups[] or communities regardless of race, ethnicity, or economic status."[15] This term accurately reflects the need to equally disseminate the benefits and burdens of environmental hazards throughout a community; however, because the term *environmental equity* does not sufficiently address advocates' concerns of racism and communities' quest for justice, the term is not expansive enough to cover the broader goals that the environmental justice movement hopes to achieve.[16]

At the other end of this spectrum is the concept of *environmental racism*. As the situation in Warren County culminated in protests and arrests, Benjamin Chavis, the director of the Commission for Racial Justice of the United Church of Christ, coined the term *environmental racism* to describe the events in North Carolina, pointing to the rampant racial discrimination in policy making, the enforcement of environmental regulations, and the siting of toxic waste facilities

---

[12] *See, e.g.*, Gerald Torres, *Environmental Justice: The Legal Meaning of a Social Movement*, 15 J.L. & COM. 597, 603-05 (1996) (noting that the environmental justice movement "has been known by several different names. The names with the most currency are: environmental racism, environmental equity, and environmental justice.").

[13] *See* COLE & FOSTER, *supra* note 3, at 10 (describing the origin of the undue burden shouldered by low-income and minority communities as "social and economic policies that subject [these communities] to daily environmental hazards").

[14] *See id.* at 15 (noting that "government agencies and industry groups prefer the term 'environmental equity,' because they feel it 'most readily lends itself to scientific risk analysis' and avoids those sometimes controversial terms 'racism' and 'justice'" (internal citation omitted)).

[15] U.S. ENVTL. PROT. AGENCY, CORE LIST FOR AN ENVIRONMENTAL REFERENCE COLLECTION 46 (2010) (EPA 260-B-10-001).

[16] *See supra* note 14 and accompanying text.

in minority communities.[17] Other explanations of environmental racism have expanded Chavis's definition, with Robert Bullard noting the economic relationship inherent in the use of the term: "Environmental racism combines with public policies and industry practices to provide *benefits* to whites while shifting industry *costs* to people of color."[18] By characterizing environmental racism in this manner, Bullard highlights the intent of environmental decision-makers to force environmental harms onto those minority populations unlikely to fight the resolution.

Environmental racism, for the most part, has been discarded by proponents of the environmental justice movement as too restrictive of a term for the inequitable distribution of environmental hazards.[19] Many siting decisions or environmental enforcement inaction may have a disproportionate effect on minority communities and can be accurately identified as environmental racism; however, less restrictive terms such as *environmental justice* expand the movement to other disadvantaged populations and capture the political aspects of environmental decision-making as it applies to environmental justice communities.[20] To equally apply the movement's aims to both racial minorities and low-income, economically disadvantaged populations, activists and scholars generally prefer to use the term *environmental justice* to describe the need for all

---

[17] Benjamin F. Chavis, Jr., *Foreword*, *in* CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 3, 3 (Robert D. Bullard ed., 1993).

[18] ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY 98 (2d ed. 1994) (emphasis in original).

[19] COLE & FOSTER, *supra* note 3, at 15-16; *see also* Torres, *supra* note 12, at 604 ("[T]here are events that fit within a sub-category of the general term 'environmental justice' that are deserving of the classification 'environmental racism.' The clear identification of that sub-category of activities calls for a separate remedial focus. . . . [E]nvironmental racism is a subset of a more general category of inquiry that has as its object a close examination of the distributional effects of environmental policy. . . . The specific theory of justice that underlies the environmental justice movement is informed by the moral and constitutional position of the anti-racism struggle of the civil rights movement, but it has a broader reach.").

[20] *See* COLE & FOSTER, *supra* note 3, at 16 ("[E]nvironmental justice requires democratic decision making, community empowerment, and the incorporation of social structure—for example, existing community health problems, cumulative impacts of preexisting environmental hazards, the effect of segregative housing patterns—in environmental decision-making processes.").

Americans, regardless of race or economic status, to have consistent access to a clean, healthy home and workplace.

To define instances where non-racially based populations are disproportionately exposed to environmental harm, the EPA has adopted the more inclusive term *environmental justice* as opposed to *environmental racism*.[21] The EPA has consistently described environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."[22] According to Luke W. Cole and Sheila R. Foster, the core of the environmental justice movement is "community self-determination," which requires public participation in the form of a "substantive dialogue among administrators, experts, and affected communities along with the opportunity for affected communities to influence the decision-making process."[23] As the following case studies from Mississippi will demonstrate, the need for collaborative community involvement in environmental decision-making from an early stage is essential for success in combating environmental injustice.

Because the disparity in the usage of these terms may appear trivial, many assume the terms to be interchangeable; however, the inherent differences among the three can be helpful in pinpointing precisely what type of social interactions are being examined within the broader scope of the movement now generally categorized as the *environmental justice* movement.[24] The possible definitions for environmental justice are endless; yet, at its most basic level, *environmental justice* is simply assuring that everyone, regardless of race or socioeconomic class, has access to "a clean, safe[,] and healthy environment."[25] From this

---

[21] *See* U.S. ENVTL. PROT. AGENCY, TOOLKIT FOR ASSESSING POTENTIAL ALLEGATIONS OF ENVIRONMENTAL INJUSTICE (2004) (EPA 300-R-04-002), *available at* http://www.epa.gov/compliance/ej/resources/policy/ej-toolkit.pdf.

[22] *See id.* at 9.

[23] COLE & FOSTER, *supra* note 3, at 16; *see also* Anne E. Simon, *Valuing Public Participation*, 25 ECOLOGY L.Q. 757 (1999) (demonstrating the need for environmental decision-making processes to be transparent and permeable).

[24] *See supra* note 19 and accompanying text.

[25] Shijuade Kadree, *It's Getting Harder to Breathe: Addressing the Disproportionate Impact of Asthma Among Minority Children Through Environmental Justice Litigation*, 3 REG'L BLACK L. STUDENTS ASS'N L.J. 51, 59 (2009).

standpoint, achieving environmental justice for low-income and minority communities is tantamount to preserving their fundamental rights. In essence, environmental justice lies at the crossroads of civil rights and environmental law.[26]

In order to fully recognize the goals of the environmental justice movement, however, the traditional meaning of the "environment" must be expanded beyond the scope of both the federal environmental laws as well as the typical lay mindset.[27] Federal statutes, such as the Clean Air and Clean Water Acts, conceptualize the environment as an omnipresent object—the air we breathe and the water we drink. While this notion is key to understanding environmental justice since many of the toxins contaminating minority communities are found in the air or local water supply, the fact remains that this idea of the environment as "nature" only considers a small portion of the "environment" that is significant to environmental justice advocates.

According to Patrick Novotny, the concept of the environment, from an environmental justice standpoint, should be envisioned as "where we live, work[,] and play."[28] The idea that the environment can encompass a family's home, a person's workplace, and a child's school and playground is vital to the success of the environmental justice movement. Reconceptualizing the idea of the environment as "where we live, work[,] and play," has opened the movement's reach to include "affordable housing, community services, and other problems not typically thought of as a part of the environment."[29] This more personalized, more intimate conceptualization of the environment has much more significance to the average member of a community plagued by hazardous waste or toxic chemicals than the generic view of the

---

[26] Michael Foard Heagerty, *Crime and the Environment–Expanding the Boundaries of Environmental Justice*, 23 TUL. ENVTL. L.J. 517, 521 (2010); *see also* Torres, *supra* note 12, at 604 ("The specific theory of justice that underlies the environmental justice movement is informed by the moral and constitutional position of the anti-racism struggle of the civil rights movement, but it has a broader reach.").

[27] *See* COLE & FOSTER, *supra* note 3, at 16 (describing the environment in the broader context of "where we live, where we work, where we play, and where we learn." (citing Charles Lee, *Environment: Where We Live, Work, Play, and Learn*, 6 RACE, POVERTY & THE ENVIRONMENT (Winter-Spring 1996), at 6)).

[28] NOVOTNY, *supra* note 2, at 3; *see also* Lee, *supra* note 27, at 6.

[29] *See* NOVOTNY, *supra* note 2, at 2-3.

environment as "nature."[30] By visualizing the environment as a place that is at the very core of daily life, members of affected communities are much more likely to actively protest the unjust conditions that threaten their health and well-being.[31]

II. THE ROAD TO ENVIRONMENTAL JUSTICE: THE EARLY MOVEMENT

In reaction to the rampant dumping of toxic chemicals and the siting of hazardous waste facilities in low-income and minority communities, grassroots activists gradually emerged as a strong force against the toxic wastes and contaminated resources plaguing their communities.[32] These early days of the environmental justice movement first captured the attention of civil rights leaders, academics, and media outlets on a national level in 1982, following a series of protests in the principally black community of Warren County, North Carolina, which was selected as the disposal location for soil contaminated by toxic poly-chlorinated biphenyls (PCBs).[33] Though more than 500 activists publicly opposed the siting decision and were subsequently arrested during the Warren County protests, the construction of the landfill continued as scheduled.[34] At the time, the battle for clean and healthy living conditions in the low-income, black communities of Warren County appeared to be lost; however, on a

---

[30] *See* COLE & FOSTER, *supra* note 3, at 16 ("[T]he preservation of wildlife and wilderness [are] concerns that are just not central to the everyday survival of poor communities and communities of color."); *see also* Regina Austin & Michael Schill, *Black, Brown, Red, and Poisoned*, *in* UNEQUAL PROTECTION: ENVIRONMENTAL JUSTICE AND COMMUNITIES OF COLOR 58 (Robert Bullard ed., 1st ed. 1994) (indicating that the mainstream environmental movement "has its priorities skewed" because it prioritizes wildlife preservation over the health and well-being of people and their communities).

[31] *See* COLE & FOSTER, *supra* note 3, at 33 ("Environmental justice activists usually have an immediate and material stake in solving the environmental problems they confront; they realize the hazards they face affect the communities where they *live* and may be sickening or even killing them or their children." (emphasis in original)).

[32] *See generally* Robert D. Bullard, *Introduction*, *in* CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 7, 8 (Robert D. Bullard ed., 1993); COLE & FOSTER, *supra* note 3, at 10-13.

[33] Paul Mohai & Bunyan Bryant, *Environmental Injustice: Weighing Race and Class As Factors in the Distribution of Environmental Hazards*, 63 U. COLO. L. REV. 921, 921 (1992).

[34] *Id.*

national level, the war against environmental injustice had just begun.

After being arrested for his role in the demonstrations in North Carolina, Walter E. Fauntroy, a congressman from the District of Columbia and the chairman of the Congressional Black Caucus, called upon the U.S. General Accounting Office (GAO) to scrutinize the racial composition and socioeconomic status of the communities surrounding major hazardous waste landfills.[35] Focusing on four landfills in the Environmental Protection Agency's Region IV, comprised of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, the GAO report found a significant correlation between the location of the landfills and the social composition of the neighboring communities.[36] Specifically, based on the available census data, three of the four studied landfills were located in areas with a majority black population, and all four communities surrounding the facilities had a black population living at or below the poverty level.[37] Building on the situation in Warren County, the GAO study brought national attention to the fact that, at least in the southeastern United States, racial minorities and communities stricken by poverty were much more vulnerable to environmental harm than their white or more affluent counterparts. Though the study did not delve into the question of *why* the sites were selected, the fact that a positive correlation existed between the communities selected for hazardous waste sites and the existence of minority or low-income populations was a significant enough finding to encourage further research as to whether instances of environmental injustice were a regional phenomenon or a nationwide epidemic.

Following the publication of the GAO report, the United Church of Christ's (UCC) Commission for Racial Justice conducted a nationwide study of hazardous waste landfills to determine if

---

[35] *Id.*; *see also* U.S. GEN. ACCOUNTING OFF., SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES (1983).

[36] U.S. GEN. ACCOUNTING OFF.*, supra* note 35, at 1-2.

[37] *Id.* at 2-3. The three hazardous waste landfills central to this study were Chemical Waste Management in Sumter County, Alabama; Industrial Chemical Company in Chester County, South Carolina; and the PCB landfill in Warren County, North Carolina. *Id.*

the GAO's findings were also applicable at the national level.[38] The UCC's study confirmed that, throughout the country, hazardous waste facilities were regularly sited in poverty-stricken communities or in areas with a significant minority population.[39] To be exact, the UCC study indicated that communities with at least one hazardous waste landfill had almost double the percentage of minorities than communities lacking hazardous waste facilities altogether.[40] Moreover, as the number of waste facilities within a given community increased, the percentage of minorities present in that area increased proportionally.[41] The UCC report emphasized that, though a community's socioeconomic status remained an important variable in the siting of hazardous waste facilities, the racial makeup of the area was the primary determining factor when making siting decisions.[42]

Further studies over the following decade slowly degraded the previous assumption that the burden of pollution is equally borne by all members of a community. As concern mounted regarding reported instances of low-income and minority communities facing greater environmental burdens, researchers found that the federal environmental laws were not being applied equally between white communities and those with high percentages of minorities.[43] Lavelle and Coyle's 1992 *National Law Journal* (NLJ) study refuted the prevailing notion that federal authorities enforced environmental laws equally among white and minority populations.[44] The study indicated that the environmental penalties levied for air, water, and waste pollution in minority areas were approximately forty-six percent lower than

---

[38] Mohai & Bryant, *supra* note 33, at 921-22.

[39] COMM'N FOR RACIAL JUSTICE: UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES 13 (1987); *see also* Mohai & Bryant, *supra* note 33, at 922.

[40] COMM'N FOR RACIAL JUSTICE, *supra* note 39, at 13.

[41] *Id.*; *see also* Mohai & Bryant, *supra* note 33, at 922 ("Where two or more such facilities are located, the proportion of residents who are minorities is more than triple.").

[42] COMM'N FOR RACIAL JUSTICE, *supra* note 39, at 23.

[43] Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law,* NAT'L L.J., Sept. 21, 1992, at S1-S12.

[44] *Id.*

penalties issued in predominantly white communities.[45] Overall, this study demonstrates that, as Lavelle and Coyle stated, "[t]here is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results[,] and stiffer penalties than communities where blacks, Hispanics[] and other minorities live."[46] In terms of the federal environmental regime at the time the NLJ study was published in 1994, minorities, regardless of their socioeconomic status, were less likely to receive the full force of governmental protection from environmental harms, thereby exacerbating the harm that minority and low-income populations faced in light of environmental contamination within their communities.

As the quest for environmental justice attracted increasing attention by both academics and the media, social scientists and legal scholars alike made it their mission to educate the public as to the reality of the disproportionate environmental burden borne by minorities and the poor in America. For sociologists like Robert Bullard, the simple fact is that low-income and, to a greater extent, minority communities bear a far greater burden in terms of negative exposure to environmental hazards.[47] According to Bullard, "[w]hether by conscious design or institutional neglect, communities of color in urban ghettos, in rural 'poverty pockets,' or on economically impoverished Native-American reservations face some of the worst environmental devastation in the nation."[48] It is this devastation that environmental justice advocates have been fighting during the past three decades, and the state of Mississippi has certainly been no stranger to such battles in recent years.

---

[45] *Id.*

[46] *Id.* at S1.

[47] *See* Bullard, *supra* note 32, at 7-13.

[48] Robert D. Bullard, *Anatomy of Environmental Racism and the Environmental Justice Movement*, *in* CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 17 (Robert D. Bullard ed., 1993).

III. ENVIRONMENTAL INJUSTICE IN MISSISSIPPI

A. Turkey Creek—Harrison County, Mississippi

The brackish waters of Turkey Creek wind through the southernmost reaches of Mississippi and into the town of Gulfport, where casinos and hotels line the coast and attract bustling crowds of tourists each year. The vibrant lights and sounds of the casinos are a far cry from what can be seen and heard in the Turkey Creek area of North Gulfport. Established in 1866 by recently emancipated African Americans, the 320 acres that originally formed the Turkey Creek community were home to a vast assortment of plants and wildlife that shaped "one of North America's most diversified natural habitats."[49] Over time, the settlers of the Turkey Creek area developed sustainable agricultural practices and furnished their own water supply from deeply drilled water wells, contributing to their success as a community fully independent of the prosperous neighboring town of Gulfport.[50] The prevalence of local customs, practices, and traditions only strengthened Turkey Creek's identity as an autonomous African American community that has remained true to its heritage.[51] In recognition of Turkey Creek's endeavors to preserve its history and culture, the community was designated as a historic district on the National Register of Historic Places in 2009.[52]

Turkey Creek, however, has been subject to the increasing pressures of urban sprawl and the continued expansion of the City of Gulfport. The community's self-sufficiency insulated it for many decades from the persistent residential and commercial development that made the Mississippi Gulf Coast a widely known tourist attraction.[53] Yet, over time, Turkey Creek residents became aware of the disadvantages of being outside Gulfport's

---

[49] *History of Turkey Creek, Mississippi*, TURKEY CREEK CMTY. INITIATIVE, http://turkey-creek.migcom.com/Content/10000/COMMUNITY_HISTORY.html (last visited Feb. 5, 2012) [hereinafter *History of Turkey Creek*].

[50] *Id.*

[51] *Ten Most Endangered List 2001*, MISS. HERITAGE TR., http://www.mississippiheritage.com/list01.html#8 (last visited Feb. 5, 2012) [hereinafter *Most Endangered List*].

[52] *Id.*

[53] *See History of Turkey Creek*, *supra* note 49.

protective reach, and the contaminated drinking water and persistent flooding conditions in the community prompted many residents to seek annexation.[54] After a local ordinance compelled the Turkey Creek community to tie into the Harrison County water supply in 1986, the community was overwhelmed by the promise of new developments which, rather than preserving their flood-prone homes and restoring the neighborhood to its previous vitality, only threatened the health and safety of their community as a whole.[55]

Commercial development projects, persistent deforestation, and a contaminated water supply have all jeopardized the continued survival of the Turkey Creek community, leading to its inclusion on the list of Mississippi's Ten Most Endangered Historic Places.[56] The most significant threat to the area, however, is the recurrent devastation of wetlands in the course of commercial and residential development.[57] Built over swampland, Turkey Creek has always been particularly susceptible to flooding.[58] The persistent destruction of wetlands threatens to worsen the flooding conditions in Turkey Creek, because the wetlands act as a filter for flood waters and slow its progress over the floodplain.[59] These recurring threats to the community inspired the creation of the Turkey Creek Community Initiatives (TCCI), a community organization founded "[t]o conserve, restore[,] and utilize the unique cultural, historical[] and environmental resources of the Turkey Creek community and watershed for education and other socially beneficial purposes."[60] Since its inception in 2003, TCCI has been instrumental in combating the threatened destruction of the historical neighborhood, and one of its major goals is to restore and preserve

---

[54] Trisha Miller, *Crossing Muddy Waters: The Struggle to Preserve a Historic Neighborhood Along Mississippi's Gulf Coast,* NAT'L HOUS. INST., July/August 2005, *available at* http://www.nhi.org/online/issues/142/muddywaters.html.

[55] *See History of Turkey Creek*, *supra* note 49.

[56] *See Most Endangered List*, *supra* note 51.

[57] *See* Ray, *supra* note 1.

[58] *Id.*

[59] *Id.*; *see also* Jenny Coyle, *Showdown at Turkey Creek*, SIERRA CLUB: THE PLANET, July/August 2003, at 7, *available at* http://www.sierraclub.org/planet/200305/planet_July.pdf.

[60] *About TCCI*, TURKEY CREEK CMTY. INITIATIVES, http://turkey-creek.migcom.com/Content/10001/ABOUT_TCCI.html (last visited Feb. 5, 2012) [hereinafter *About TCCI*].

the community in such a way that environmental justice may be achieved for Turkey Creek residents.[61]

Though the neighborhood may be an official part of Gulfport, Turkey Creek and other parts of North Gulfport still do not have proper curbs or sidewalks, making for dangerous conditions during times of flood.[62] The creek itself, once a cultural center of the community known for its baptisms and fishing grounds, is now so polluted that the few surviving fish are inedible due to high levels of fecal coliforms from raw sewage leaking into the creek, toxic soil left over from an abandoned creosote plant, and excessive mercury present in the water.[63] After the City annexed Turkey Creek, Gulfport officials attempted, but failed, to rezone the neighborhood for commercial development.[64] One of the community's oldest cemeteries, established in the early twentieth century, was razed in order to accommodate a new residential apartment complex.[65] As of 2009, wetland areas of Turkey Creek and North Gulfport have been slated to be filled and turned into parking lots and car wash facilities for the nearby airport.[66] These illustrations are but a few which demonstrate the means by which the City of Gulfport has taken advantage of Turkey Creek's resources for its own benefit and shifted the costs to those struggling to revitalize the once-vibrant neighborhood, echoing Bullard's previously discussed definition of environmental racism.[67]

Additional examples of Turkey Creek's fight for justice have garnered national attention for the community threatened both by natural floods and Gulfport's continual quest for commercial development.[68] In 2001, the U.S. Army Corps of Engineers

---

[61] *Id.*

[62] *See* Miller, *supra* note 54.

[63] *Id.*; *see also* Ray, *supra* note 1.

[64] Miller, *supra* note 54.

[65] *Id.*

[66] *See Most Endangered List*, *supra* note 51.

[67] *See* BULLARD, *supra* note 18.

[68] The situation in Turkey Creek has been featured, most notably, on CNN (Candy Crowley & Sasha Johnson, *Turkey Creek Feels Abandoned,* CNN (Sept. 22, 2005), http://articles.cnn.com/2005-09-22/us/turkey.creek_1_north-gulfport-bad-communication-mississippi?_s=PM:US) and *The Daily Show with Jon Stewart* (For a clip from the television program, see *Watch: The Daily Show Features Historic Turkey*

granted the City of Gulfport a permit under Section 404 of the Clean Water Act (CWA) to construct a storm water drainage system along Louisiana Avenue in the Turkey Creek neighborhood.[69] Under this permit, the Corps authorized the City to dredge a drainage channel along this street to collect stormwater runoff, and the City would deposit the excavated material at a designated upland site apart from the wetland surrounding the community.[70] During the course of the project, the City violated the CWA by placing excessive amounts of fill material at the project site and by depositing the excavated fill on nearby abandoned lots, which resulted in the unauthorized fill of almost one and a half acres of wetlands.[71] TCCI filed suit in 2007 to have the City remove the unauthorized fill from the wetlands, which, if allowed to remain, would exacerbate flooding conditions in the community, and the City negotiated a settlement to remediate the wetlands.[72]

In 2000, prior to the Louisiana Avenue situation, the Corps of Engineers also granted a permit to Butch Ward, a politically-well connected regional developer, to fill in 350 acres of wetlands in North Gulfport for a massive commercial-use complex and office park.[73] Outraged by the potential flood damage that such an expansive development could cause to the historic homes and churches of Turkey Creek, thousands of local residents filed petitions and submitted testimony to the City and the Corps voicing their indignation at the project.[74] Within forty-eight hours of learning of the proposed development, Rose Johnson, the chair of the Mississippi chapter of the Sierra Club, collected 526 signatures on a petition opposing the new construction, in addition to sixty letters addressed to the Corps of Engineers, which noted the "relatively high number" of comments they

---

Creek, Mississippi, BRIDGE THE GULF (Jan. 25, 2011, 11:41 AM), http://bridgethegulfproject.org/node/235).

[69] Stephanie Showalter, *Turkey Creek Community Initiatives Continues Fight to Preserve Wetlands,* WATER LOG, Aug. 2008, at 10, *available at* http://masglp.olemiss.edu/Water%20Log%20PDF/28.2.pdf.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 11.

[73] Miller, *supra* note 54; *see also* Ray, *supra* note 1.

[74] Miller, *supra* note 54.

received from Turkey Creek residents.[75] The community's public opposition to the project led the then-mayor of Gulfport, Ken Combs, to reference Turkey Creek residents as "dumb bastards," highlighting the disconnect between the historically black community and those promoting Ward's development.[76] Securing representation by the Sierra Club, the Turkey Creek community threatened legal action over the issuance of the state and federal wetland fill permits, which, if granted, would be the largest permits granted for action on the Mississippi Coast since the passage of the Clean Water Act.[77] After months of public opposition, Ward withdrew his permit application to fill the wetlands, sparing the homes of Turkey Creek further damage from persistent flooding.[78]

Today, Turkey Creek continues to fight the Corps over wetland fill permits under the CWA. Most recently, the District Court for the Southern District of Mississippi ruled that TCCI lacked standing to challenge the Corps' Regional General Permit which would expedite the process for filling up to three acres of wetlands in order to spur commercial development projects in the wake of Hurricane Katrina.[79] As of the 2009 ruling, no one had filed an application under the RGP; therefore, TCCI could not assert that an actual increase in flooding in the community would occur.[80]

The recurrent initiatives to fill in these wetlands protecting the Turkey Creek neighborhood from pervasive and destructive flooding demonstrate that environmental injustice is at work in North Gulfport. As a historically black community, Turkey Creek's cultural value has been recognized by the National Register of Historic Places and the Mississippi Heritage Trust through its designation as a historical and endangered point of interest; however, real estate developers continually attempt to profit off of the area's wetlands by filling them and constructing office parks, disregarding the homes, churches, and schools that could be

---

[75] *See also* Ray, *supra* note 1.

[76] *Id.*

[77] Miller, *supra* note 54.

[78] *Id.*

[79] Turkey Creek Cmty. Initiatives v. U.S. Army Corps of Eng'rs, No. 1:08cv124-LG-RHW, 2009 WL 2252882, at *1, *7 (S.D. Miss. July 28, 2009).

[80] *Id.* at *4.

destroyed by flooding in the aftermath. In this respect, this black community is shouldering an excessive environmental risk that has not been equally felt among other areas of Gulfport. Accordingly, Turkey Creek is one such community that "need[s] to be preserved and protected from pollutants and other harms" by environmental justice advocates.[81]

B. Eastmoor Estates—Moorhead, Mississippi

Two hundred fifty miles north of Gulfport, the town of Moorhead is located in Sunflower County, in the midst of the Mississippi Delta. According to the U.S. Census Bureau, 82.5% of Moorhead's population is African American, and approximately 48.4% of the community is below the poverty level.[82] Just outside of the city limits, the low-income subdivision of Eastmoor Estates provides standalone housing for eighty-four families.[83] Built in 1970, Eastmoor Estates was established outside of the Moorhead city limits in an effort to segregate the low-income, African American population from the remainder of the city.[84] Eastmoor Estates operated as a successful low-income housing project until 1993, when Glenn Miller acquired the subdivision and financed the purchase under the Low-Income Housing Tax Credit Program (LIHTC).[85]

After Miller took control of Eastmoor Estates, he failed to regularly maintain the common areas and individual homes as required by the LIHTC.[86] Residents noticed that the condition of

---

[81] *See* COLE & FOSTER, *supra* note 3, at 16.

[82] *Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data for Moorhead City, Mississippi*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table (last visited Feb. 5, 2012); *see also Selected Economic Characteristics: Moorhead City, Mississippi*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_DP03&prodType=table (last visited Feb. 5, 2012).

[83] Complaint to Enforce Low-Income Housing Tax Credit Obligations, for Intentional Tort, Negligence, Nuisance, to Enjoin Wrongful Eviction and Wrongful Foreclosure, for Damages for Unjust Enrichment, and for Other Relief at 2, Eastmoor Estates Residents Ass'n v. Miller, No. 4:10-cv-00144-WAP-DAS (N.D. Miss. Nov. 12, 2010) [hereinafter Complaint].

[84] Interview with Desiree Hensley, University of Mississippi School of Law, Civil Legal Clinic—Housing Division, in Oxford, Miss. (Dec. 1, 2010) (on file with author).

[85] Complaint, *supra* note 83, at 7.

[86] *Id.* at 9.

the homes deteriorated rapidly, with many tenants reporting leaking roofs, broken windows and doors, unstable foundations, electrical malfunctions, and faulty plumbing.[87] The state of the neighborhood itself similarly worsened, and many burnt-out and boarded-up homes line the sidewalks, which are broken and generally impassable.[88] The worst of the neighborhood's problems, however, surfaced in 1998, when Eastmoor's sewage system began to fail, causing raw sewage to back up into bathtubs, build up in yards, and accumulate in the streets where children play on a regular basis.[89] The failure of the system may have additionally contaminated the neighborhood's drinking water and, as such, the rampant sewage leaks present a considerable threat to the residents' health and well-being.[90]

By 2000, the situation in Eastmoor had attracted local attention and had been featured in area newspapers, and the efforts of the Eastmoor Estates Residents Association—the neighborhood's community organization—provided temporary solutions to the sewage situation; however, the City's occasional flushing of the sewer lines to reduce sewage backup never provided a permanent answer to the problem.[91] When it became apparent to the EERA that their actions had failed to convince either the City or Miller to repair the sewer system, the residents sought to file suit against Miller and contacted the Civil Legal Clinic of the University of Mississippi School of Law, which only represents clients whose income level falls at or below the federal poverty level.[92]

In October 2010, several Eastmoor tenants notified Miller of their intent to sue under the Clean Water Act for his failure to adequately maintain the sewer system.[93] Upon receiving this notice, he summarily began sending eviction notices to these

---

[87] *Id.*

[88] *Id.* at 9-10.

[89] *Id.* at 2; *see also* Memorandum of Points and Authorities Supporting the Grant of a Preliminary Injunction at 2, Eastmoor Estates Residents Ass'n v. Miller, No. 4:10-cv-00144-WAP-DAS, (N.D. Miss. Nov. 12, 2010) [hereinafter Memorandum of Points and Authorities].

[90] Complaint, *supra* note 83, at 9.

[91] Interview with Desiree Hensley, *supra* note 84.

[92] Memorandum of Points and Authorities, *supra* note 89, at 17.

[93] Complaint, *supra* note 83, at 2.

residents, apparently in retaliation for the impending lawsuit.[94] In mid-November, the U.S. District Court for the Northern District of Mississippi entered a consent decree on the residents' motion to end the evictions prior to the resolution of the litigation of this matter.[95] Because of the nature of this housing development, the effect of the threatened evictions would have been extreme for this low-income community. The residents of Eastmoor have little money, and they range from young families with children to elderly or disabled adults whose sole source of income is a monthly social security check; the reality of eviction for these families is that many, if not all of them, would be unable to find alternative housing in Moorhead.[96] Moorhead and the surrounding areas have limited opportunities for low-income families, and, if all of the families involved in the litigation had been evicted, many would have faced certain homelessness.[97]

Eastmoor Estates was designed to be a neighborhood of rental homes, and this arrangement was preserved as part of Miller's purchase under the LIHTC.[98] As Miller allowed Eastmoor to fall into a state of disrepair, he began entering into Lease/Purchase agreements with many of the community's residents, in violation of the Land-Use Restriction Agreement (LURA) that he signed upon purchasing the subdivision.[99] The LURA requires Miller to maintain Eastmoor as low-income rental housing and prohibits the transfer of any part of the subdivision until 2038.[100] Under the guise of these Lease/Purchase

---

[94] *Id.*; *see also* Memorandum of Points and Authorities, *supra* note 89, at 9.

[95] Interview with Desiree Hensley, *supra* note 84. As of February 2012, the City of Moorhead has received a Community Development Block Grant to replace the sewer system in Eastmoor Estates, which is contingent upon the city accepting ownership and control of the system in the future. In addition, the city has been conducting basic sewer maintenance at Eastmoor Estates since the district court entered an order providing that doing so would not prejudice the City's denial of liability in the case. Though the residents of Eastmoor may soon find relief from the neighborhood's pervasive sewage troubles, their case remains in active litigation over other conditions in the neighborhood. Interview with Desiree Hensley, University of Mississippi School of Law, Civil Legal Clinic—Housing Division, in Oxford, Miss. (Feb. 3, 2012) (on file with author).

[96] Memorandum of Points and Authorities, *supra* note 89, at 8-9.

[97] *Id.*

[98] Complaint, *supra* note 83, at 7, 11.

[99] *Id.* at 7-8.

[100] *Id.* at 7, 10.

agreements, many of the residents believed that they had an ownership interest in their homes.[101] The effect of allowing Eastmoor residents to "purchase" their homes effectively shifted all of the responsibilities of ownership to the residents—paying property taxes, purchasing hazard insurance for Miller, and repairing and maintaining the property—while allowing Miller to retain the benefits of owning the subdivision, including the right to evict the residents and keep the equity that they paid into the property.[102] Under these agreements, Miller attempted to thrust the duty of maintaining the condition of the home to the renter in possession of the property; however, the LURA and the requirements of the LIHTC program specifically require Miller, as the subdivision's legal owner, to maintain the properties in a habitable condition.[103] The fraudulent purchase agreements resulted in the residents paying mortgage interest, taxes, and homeowners' insurance, which violated the LIHTC's requirement that Eastmoor be operated as rent-restricted housing.[104]

With Miller and the Eastmoor residents at odds over which party is responsible for maintaining the properties, the persistent sewage backup in the neighborhood has gone virtually unrepaired since 1998. Residents have complained about the problem to the City of Moorhead, which furnishes Eastmoor with its water supply; however, city officials have contended that because Eastmoor is technically outside the city limits, the subdivision is not their responsibility to maintain.[105] As previously mentioned, the Eastmoor subdivision was deliberately constructed outside the Moorhead city limits in an effort to separate the low-income, predominantly African American community from the remainder of the city.[106] Thus, though the City of Moorhead furnishes Eastmoor's water, the City has refused to take responsibility for the deterioration of the sewage system. Additionally, since Miller refuses to maintain the system on the ground that he has "sold" the homes to the tenants, the residents of Eastmoor have been left

---

[101] *Id.* at 8.
[102] *Id.* at 12; *see also* Memorandum of Points and Authorities, *supra* note 89, at 4.
[103] Complaint, *supra* note 83, at 12.
[104] *Id.* at 11.
[105] Interview with Desiree Hensley, *supra* note 84.
[106] *See id.*

with virtually no recourse other than litigation in order to achieve healthy living conditions and safe drinking water.

Like Turkey Creek, Eastmoor residents have faced the possibility of having their neighborhood—where they live, work, and play—destroyed, as those responsible for the destruction reap the benefits. If the flooding in Turkey Creek should worsen as land developers fill the surrounding wetlands to make room for expansive office complexes or residential apartment buildings, their homes, schools, and churches will be at risk. Similarly, if the sewage system in Eastmoor remains unchanged, residents face living amid pools of raw sewage, which poses a serious risk to their health. These communities have much in common—they are both predominantly black, they are both threatened by environmental hazards, and the residents are clearly fighting to have access to clean, healthy living conditions that are not at risk for destruction. The goals of these communities mirror those of the environmental justice movement, and residents of Turkey Creek and Eastmoor Estates have become grassroots activists for environmental justice, seeking a remedy for the inequities that their communities face.

IV. REMEDYING THE INJUSTICE

In order to remedy environmental injustice, state legislatures and local governments have the option of fighting the battle on the front end, before the environmental hazards have an adverse effect on the community, or, should legislative or municipal action not suffice to prevent these inequities, community members may resort to litigation in order to rectify the harm being done to the environment where they live, work, and play. Because of the difficulties that plaintiffs will face in highly politicized environmental justice litigation, communities are better served when states or municipalities implement measures to prevent or discourage environmental injustice; however, even if such measures are successfully implemented at the state or municipal levels, the fact remains that many low-income or minority communities will have to resort to litigation to remedy any environmental hazards that may still impact their residents. Should communities determine that litigation is the best remedy, there are measures that, if implemented by the community prior

to or during the lawsuit, can balance the political environment within the courtroom to better their chances of success.

A. Legislative Remedies

As environmental activists and legal scholars attracted increasing national attention to the mission to eliminate environmental injustice, legislation aimed at achieving this goal was frequently introduced to Congress during the 1990s; however, these legislative efforts for the most part failed at the federal level because the political composition of Congress was unreceptive to major environmental legislative changes.[107] Individual states, on the other hand, have been markedly more successful in implementing legislation and policies geared toward equitably distributing environmental harms and toxic conditions among all communities, regardless of their racial composition or socioeconomic status.[108] A growing trend in advancing environmental justice at the state level has been to increase avenues for meaningful community participation, which "leads to policy decisions that reflect the whole polity, and contribute to a more vibrant democracy including and beyond the environmental context."[109] Unless a state has specified additional requirements, the decision-making process typically involves the basic rules of notice and comment.[110] The development of state legislation designed to enhance public participation in this decision-making process demonstrates the growing recognition that individuals

---

[107] *See* Rivers, *supra* note 7, at 462 ("[Federal l]egislation could improve the rigor of environmental justice enforcement tools, provide a private right of action, and lower the level of deference that courts afford to agency determinations that are perceived to be unjust. To date, however, the movement has been unsuccessful in efforts to shepherd environmental justice legislation through the Congress." (internal citations omitted)).

[108] AM. BAR ASS'N, ENVIRONMENTAL JUSTICE FOR ALL: A FIFTY-STATE SURVEY OF LEGISLATION, POLICIES, AND CASES iv (4th ed. 2010) [hereinafter ENVIRONMENTAL JUSTICE FOR ALL], *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/environment_energy_resources/environmental_justice_for_all.authcheckdam.pdf.

[109] *Id.* at viii.

[110] COLE & FOSTER, *supra* note 3, at 107 ("[A]ll states require, at a minimum, that an applicant or agency provide notice to the public and that there be a reasonable period to receive written or oral comments . . . .").

actually affected by environmental decisions should be afforded an adequate opportunity to partake in this process.[111]

In keeping with this trend, Mississippi State Senator Deborah Dawkins proposed new environmental justice legislation to the Senate Committee on Environmental Protection, Conservation, and Water Resources in 2009.[112] If passed, Dawkins's bill would have increased the opportunities for the participation and meaningful involvement of residents of identified minority or low-income communities affected by permit applications, facility sitings, or enforcement of environmental laws.[113] Since Dawkins's proposed legislation died in committee, the state remains without any substantive environmental justice policy specifically mandating that the public be allowed to significantly participate in decisions that would affect the environmental status of the areas where they live, work, and play. Such legislation would assist local grassroots activists by affording them enhanced opportunities "to influence the outcome of the environmental decision and, ultimately, to shape the future of their communities."[114] However, with no specific policy in place at the state level, environmental justice activists in Mississippi must rely on their own efforts to organize and educate their peers to combat any environmental hazards or toxic conditions that negatively impact their communities.

Several states have enacted legislation which, if adopted in Mississippi, would bring the state closer to achieving the environmental justice movement's goal of providing communities bearing the burden of environmentally hazardous conditions with the opportunity to have a significant role in deciding to accept that burden. California, for instance, has instituted comprehensive community participation programs for permit approvals and various types of siting decisions.[115] Specifically, in requesting a permit for new landfill construction, developers must actively solicit the opinions of minority and low-income community

---

111 *See* ENVIRONMENTAL JUSTICE FOR ALL, *supra* note 108, at viii.

112 S.B. 3086, 2009 Leg., Reg. Sess. (Miss. 2009), *available at* billstatus.ls.state.ms.us/documents/2009/pdf/SB/3000-3099/SB3086IN.pdf.

113 *Id.* § 2.

114 COLE & FOSTER, *supra* note 3, at 106.

115 *See* ENVIRONMENTAL JUSTICE FOR ALL, *supra* note 108, at 27.

members as part of their proposal.[116] Moreover, developers seeking approval for hazardous waste facilities must publicize their proposals by clearly publishing notice in area newspapers, posting announcements throughout neighboring communities, and mailing information to adjacent landowners.[117] Though California's legislation specifically references the development of landfills and hazardous waste facilities, these laws could easily be expanded to cover additional permitting situations that could have adverse impacts on environmental justice communities.

Mississippi communities such as Turkey Creek could clearly benefit from legislation modeled after California's policy requiring developers to directly seek out the opinion of the low-income or minority communities surrounding their potential project sites. Even legislation mandating that developers publicize their proposals to adjacent communities can provide a clear benefit to environmental justice communities by putting residents on notice of the proposed development project, whether it be in the form of proposals for hazardous waste disposal facilities or for the filling of wetland areas, as with Turkey Creek. By the time Senator Dawkins informed Rose Johnson that a developer had requested a permit to fill hundreds of wetland acres adjacent to Turkey Creek, the public comment period had only one week remaining.[118] Though she collected dozens of letters and over 500 signatures on a petition opposing the commercial development project, had she and other members of the community realized that such a proposal was being considered by the Corps of Engineers, the community could have responded much more quickly and with much greater force. Had Senator Dawkins not informed Johnson of the proposed development in Turkey Creek, the community may have never realized that the only wetlands standing between their homes and seasonal flooding were poised for destruction. In circumstances such as these, legislation, such as that enacted in California, would prove instrumental in effectively encouraging public participation in environmental decision-making.

---

[116] Assem. B. 1497, 2003 Gen. Assemb., Reg. Sess. (Cal. 2003), *available at* http://www.calepa.ca.gov/EnvJustice/Legislation.

[117] CAL. HEALTH & SAFETY CODE § 25199.7(a) (West 1990).

[118] Ray, *supra* note 1.

B. Community Education Programs

In addition to specific environmental justice measures enacted at the legislative level, several states have established community education programs, which, as part of a functional environmental justice policy, make significant strides in encouraging meaningful public involvement in environmental decision-making and the permitting process. West Virginia, for instance, has enacted a community education plan,[119] which, if adapted for Mississippi, could be instrumental in facilitating both public comprehension of the notice and comment process as well as agency awareness of community problems. The state has created the Office of the Environmental Advocate (OEA), an official responsible for assisting residents with navigating the complex processes of the state's Department of Environmental Protection.[120] The state's Environmental Advocate is additionally charged with disseminating information to residents of environmental justice communities regarding permitting, public notices, and the existence of environmental advocacy groups in various areas of the state.[121] Most notably, however, the EA has created two booklets designed to encourage community involvement in environmental decision-making.[122] The *Citizen's Guide* outlines DEP rulemaking procedures and describes the permitting process for projects requiring DEP approval.[123] The *Permit Hearings and Appeals Guide* provides residents with both a detailed overview of the public hearing and appeals procedures and instructions for participating in these DEP processes.[124]

The Mississippi Department of Environmental Quality has formed the Office of Community Engagement (OCE), which is, in

---

[119] ENVIRONMENTAL JUSTICE FOR ALL, *supra* note 108, at 205.

[120] *Id.*; *see also* W. VA. DEP'T OF ENVTL. PROT: OFF. OF ENVTL. ADVOCATE, http://www.dep.wv.gov/environmental-advocate/Pages/default.aspx (last visited Feb. 5, 2012).

[121] ENVIRONMENTAL JUSTICE FOR ALL, *supra* note 108, at 205-06.

[122] *Id.* at 207.

[123] W. VA. DEP'T OF ENVTL. PROT.: OFF. OF ENVTL. ADVOCATE, CITIZEN'S GUIDE (2008), *available at* http://www.dep.wv.gov/environmental-advocate/Documents/DEP2008CitizensGuide.pdf.

[124] W. VA. DEP'T OF ENVTL. PROT.: OFF. OF ENVTL. ADVOCATE, PERMIT HEARINGS AND APPEALS GUIDE, *available at* http://www.dep.wv.gov/environmental-advocate/Documents/Permit%20Hearings%20and%20Appeals%20Guide.pdf.

many respects, similar to West Virginia's Office of the Environmental Advocate. Like West Virginia's OEA, Mississippi's OCE is dedicated to facilitating community involvement in the often complicated permitting and public comment processes.[125] The OCE has been charged with enhancing community organization by encouraging "equitable and authentic participation" and making the environmental decision-making process easier to understand and more accessible to the public.[126] In doing so, the OCE endeavors to promote community awareness of siting decisions and permit applications while also increasing public involvement in the decision-making process. Moreover, the OCE notes that one of its major goals is to present information in such a way that the public can better understand the environmental decisions at hand. Mississippi's OCE would likely be an ideal venue for providing publications along the lines of the Environmental Advocate's informational booklets regarding permitting and public hearings.

As an additional example, the California Environmental Protection Agency has instituted substantial opportunities for community involvement in environmental decision-making in the form of public and online discussion forums as well as a Listserv that emails subscribers with environmental justice announcements and opportunities for public comment.[127] The California EPA's decision to offer online forums and e-mail notifications could easily be adopted in Mississippi by the OCE, offering those with regular internet access the option to discover opportunities for public comment that affect their communities.

By acting as a liaison between state government officials and the public, these community education programs provide a direct means of achieving the environmental justice movement's goal of

---

[125] MISS. DEP'T OF ENVTL. QUALITY: OFF. OF CMTY. ENGAGEMENT, http://www.deq.state.ms.us/mdeq.nsf/page/CE_Home?OpenDocument (last visited Feb. 5, 2012); *see also* MISS. DEP'T OF ENVTL. QUALITY: OFF. OF CMTY. ENGAGEMENT, PRESENTATION, *available at* http://www.deq.state.ms.us/mdeq.nsf/pdf/CE_Officeof CommunityEngagementPresentation/$File/Office%20of%20Community%20Engagemen t%20presentation.pdf?OpenElement (last visited Feb. 5, 2012).

[126] *Id.*

[127] ENVIRONMENTAL JUSTICE FOR ALL, *supra* note 108, at 29; *see also Public Participation in Cal/EPA's Environmental Justice Program*, CAL. ENVTL. PROT. AGENCY, http://www.calepa.ca.gov/EnvJustice/Participation (last visited Feb. 5, 2012).

allowing communities slated to bear the burden of hazardous or toxic conditions to speak out against decisions adversely affecting them.[128] Cole and Foster note that the typical pluralistic model of environmental decision-making tends to exclude those with certain social disadvantages, particularly those from low-income or minority communities, because they have fewer resources than others (industry figures and government officials) who partake in the decision-making process.[129] Specifically, many of these communities lack access to pertinent information or specialized knowledge necessary to fully participate in environmental decision-making that stands to have a negative impact on the places where they live, work, or play.[130] This lack of knowledge is an obstacle standing in the way of the adequate, meaningful, and significant community participation that is crucial for grassroots environmental justice advocates desiring to combat the decisions that spread an unequal environmental burden to disadvantaged communities.

Community education initiatives, such as those in place in West Virginia, California, and Mississippi, work to dismantle this obstacle by providing resources to the general public regarding decision-making procedures and the legal and scientific concepts pertinent to the community. According to Cole and Foster, "only when access to [information and knowledge] is relatively equal among parties to a conflict can the parties truly understand their own interests and dialogue proceed toward the democratic ideal."[131] Thus, these efforts to educate the public work to place low-income and minority communities on the same playing field as government and industry officials who have ample time to pursue the permitting process as well as adequate access to the technical knowledge and scientific resources necessary to support their position.[132]

Moreover, in West Virginia and California, officials undertake the additional responsibility of providing

---

[128] *See* COLE & FOSTER, *supra* note 3, at 106.

[129] *Id.* at 109.

[130] *Id.*

[131] *Id.*

[132] *Id.* at 110 (describing the developer's ability to dominate the decision-making process "by virtue of their superior economic power, knowledge, and opportunity to influence the process").

supplementary forms of notice to those likely to be interested in the public comment meetings for environmental decisions.[133] In many communities, standard notice and comment requirements are insufficient to provide an adequate announcement that proposed development is underway,[134] which is precisely what happened in Turkey Creek. In today's constantly connected society where many would prefer to check the news online than read the local newspaper, technology-dependent community notification initiatives, including online forums and e-mail messages, provide an additional means of notifying community members about decisions that could have a potentially adverse effect on their environment. For those with even occasional access to a computer, these measures can prove essential to providing adequate notice to communities, because the likelihood of residents reading the minuscule print of the official notice in an area newspaper is growing increasingly unlikely.[135] Accordingly, the implementation of comprehensive community involvement initiatives is essential to expanding the knowledge and resources available to low-income and minority populations, which in turn increases the chance that the public will have the opportunity to meaningfully participate in decisions that could potentially have devastating impacts on their communities.

C. The Viability of Litigation

1. The Pitfalls of the Courtroom

As the inadequacies of public participation measures surface during the decision-making process,[136] many communities understandably consider the feasibility of litigation as means of sparing themselves and their neighbors from increased environmental burdens. However, the decision to move the battle out of the community and into the courtroom can, in many instances, limit a community's chances of gaining the relief that it seeks.[137] Practically speaking, environmental justice disputes are

---

[133] *See supra* notes 115, 117, and 121.
[134] *See* COLE & FOSTER, *supra* note 3, at 107-10.
[135] *Id.* at 110.
[136] *See id.* at 107-10.
[137] *Id.* at 121-30.

more political and economic than legal in nature; thus, an expensive, time-consuming, and resource-demanding lawsuit may prove ineffective or even harmful to the community's mission for justice—unless the plaintiff community members can act as a politicized and organized partnership focused on eliminating the environmental injustice affecting their surroundings.[138]

Should a community group decide to file suit against the developers or polluters causing environmental devastation to the places where they live, work, or play, they may choose between several avenues of litigation, generally environmental laws or civil rights; however, there are obstacles associated with each of these options that may prove difficult for environmental justice plaintiffs to overcome.[139] Regardless of the road chosen by plaintiffs and the strength of their case for environmental justice, the difficulties of litigation often can only be overcome by the community's political strength and dedication to their cause.[140]

a. Environmental Law Claims

A community may choose to base their lawsuit on purely environmental law claims, which, with their primary focus on procedural processes, generally carry a moderately high rate of success.[141] Many federal environmental laws (and their counterparts at the state level) are procedurally oriented, meaning that they outline a particular series of steps that, once they have been completed, signal effective compliance with the statute.

The National Environmental Protection Act (NEPA), for instance, is one such federal statute that concerns itself with only procedural hoops to be jumped through—once a permit applicant undertaking a federal action demonstrates that he has sufficiently documented the potential environmental effects of his proposal in an Environmental Impact Statement, then the applicant can

---

[138] *See* Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 FORDHAM URB. L.J. 523, 523-45 (1994); *See also* COLE & FOSTER, *supra* note 3, at 122, 129.

[139] *See* COLE & FOSTER, *supra* note 3, at 122-28.

[140] *See* Cole, *supra* note 138, at 523-45; *See also* COLE & FOSTER, *supra* note 3, at 122, 129.

[141] *See* Cole, *supra* note 138, at 523-45; *See also* COLE & FOSTER, *supra* note 3, at 122, 129.

theoretically check the EIS requirement off of his to-do list, receive his permit, and begin construction on his proposed development.[142] NEPA is not remotely concerned with the substantive environmental results of the proposed action; as long as the applicant has considered environmental effects as part of his EIS and permit application, the requirements of NEPA have been met.[143] Community groups may challenge such procedurally-oriented laws by alleging that the statutorily specified procedures were not actually followed.[144] Failure to adhere to the procedural measures outlined in the statute results in noncompliance, which can lead to the permit's revocation and, more importantly, success for those seeking to put an end to the proposal.

Typically, unless the plaintiff community is arguing that environmental injustice has occurred due to the failure of the defendant to follow statutorily specified procedures, lawsuits with a sole basis in environmental law will fail. Though courts have, in hearing complaints rooted in environmental laws, recognized that marginalized communities require adequate and equal access to the decision-making process, many courts refuse to extend these rulings to guarantee that these communities have a meaningful involvement in the process.[145] Moreover, another problem inherent in using purely environmental law claims as a means of remedying instances of environmental injustice is that the statutory scheme for many of these federal laws can, for an attorney who does not typically venture into the environmental field, prove quite technical and complex. For lawsuits of this type, engaging the services of a legal team well versed in the field of environmental law is essential.[146]

b. Civil Rights Claims

Community groups have the additional option of bringing a lawsuit in federal court under non-environmental statutes,

---

142 42 U.S.C. §§ 4321-4370 (2006).
143 *Id.*
144 *See* COLE & FOSTER, *supra* note 3, at 122.
145 *See id.* at 124.
146 *See* Cole, *supra* note 138, at 528.

particularly using civil rights legislation.[147] Lawsuits raising civil rights claims to remedy environmental hazards, though largely ineffective from a legal standpoint, do have many benefits for the community groups that bring such claims. When environmental inequities are the crux of the lawsuit, the allegation of civil rights violations can prove particularly helpful to the plaintiff community by more clearly illustrating the nature of the community's struggles and building morale within the community as it prepares for the time-consuming and costly litigation that awaits them.[148] Moreover, claims brought under the Civil Rights Act have the additional benefit of not only pressuring the defendants to refute the allegations but also bringing more widespread attention to the community's environmental battles.[149]

Despite these benefits, however, from a legal viewpoint, claims under the Civil Rights Act prove difficult for environmental justice plaintiffs. Section 601 of Title VI of the Civil Rights Act of 1964 prohibits discrimination on the grounds of race, color, and national origin by any program that receives federal funding.[150] In an action under Section 601, however, plaintiffs must be able to establish discriminatory intent on the part of the permit applicant or agency granting the permit, which is often difficult or impossible to prove.[151] Accordingly, for most environmental justice plaintiffs, Section 601 lawsuits have been largely ineffective as a

---

147 *See* COLE & FOSTER, *supra* note 3, at 125-28 (describing the use of civil rights laws as a tool for securing environmental justice through the decision-making process); *see also* Gauna, *supra* note 4, at 12 (noting that plaintiffs often "litigate under civil rights laws to address disparity in environmental protection"); Cole, *supra* note 138, at 530 ("Adding civil rights claims as part of an environmental law suit allows a community group to paint a fuller picture for the judge about what is actually going on in a community. It also has significant political import . . . ." (internal citations omitted)).

148 *See* COLE & FOSTER, *supra* note 3, at 126 ("Alleging civil rights claims, especially as part of a lawsuit that also uses environmental laws, can be very useful in building morale, raising the profile of a community's struggles, and educating the public about environmental racism."); *see also supra* note 147 and accompanying text.

149 *See supra* note 132 and accompanying text.

150 42 U.S.C. § 2000d (2006).

151 Guardians Ass'n v. Serv. Comm'n, 463 U.S. 582 (1983); *see also* COLE & FOSTER, *supra* note 3, at 126 ("[C]ourts have ruled that a government action that might have a discriminatory impact is not unconstitutional unless the decision maker had a discriminatory *intent*, something that is very hard to prove." (emphasis in original)).

means of preventing future or remedying existing environmental harms.[152]

When discriminatory intent presents a barrier to a civil rights claim, environmental justice plaintiffs have attempted to push private lawsuits through the federal court system under Section 602 of Title VI, which authorizes federal agencies to implement regulations prohibiting recipients from using federal funding in ways that cause disparate impacts.[153] This section of Title VI can even be applied in lawsuits filed against state and local agencies, on the grounds that many states receive federal funding for various purposes;[154] thus, the potential scope of defendants reached by Section 602 could be quite expansive.[155] Section 602 dispenses with the discriminatory intent requirement and, in theory, would appear to open the gates for environmental justice litigants to bring civil rights claims. However, though Section 601 creates a private right of action that permits plaintiffs to file suit in federal court,[156] the Supreme Court, in *Alexander v. Sandoval*, denied a private right of action to enforce agency regulations implementing Section 602.[157] Thus, following the *Sandoval* decision, environmental justice communities seeking to file suit under the Civil Rights Act must establish that a defendant engaged in intentional discrimination in making decisions that negatively affected the plaintiffs and their surrounding environment. To date, no plaintiff in a Title VI lawsuit has met this burden in the environmental justice context, though many communities have attempted to do so in several jurisdictions.[158]

Dissenting in *Sandoval*, Justice Stevens raised the possibility that plaintiffs could avoid Section 602's lack of a private right of action by instead filing their Title VI lawsuits under 42 U.S.C. §

---

[152] COLE & FOSTER, *supra* note 3, at 126.

[153] Bradford C. Mank, *Title VI*, *in* THE LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS 23-24 (Michael B. Gerrard & Sheila R. Foster eds., 2d ed. 2008).

[154] *Id.* at 23.

[155] COLE & FOSTER, *supra* note 3, at 127.

[156] *See, e.g.*, *Guardians Ass'n*, 463 U.S. at 594.

[157] Alexander v. Sandoval, 532 U.S. 275, 293 (2001) (holding that specific agency regulations cannot provide more expansive rights to plaintiffs than the statute's prohibition against intentional discriminatory acts in Section 601).

[158] COLE & FOSTER, *supra* note 3, at 126.

1983, which creates liability for persons "who, under color of [state law] . . . [subject or deprive any citizen of the United States] of any rights, privileges, or immunities secured by the Constitution and laws [of the United States]."[159] In certain circuits, lower courts adopted Justice Stevens's approach and allowed plaintiffs to base a Section 1983 lawsuit on Title VI regulations; however, in the year following the *Sandoval* decision, the Supreme Court addressed the issue in *Gonzaga University v. Doe*, holding that Section 1983 cannot be used to enforce an individual's statutory rights if the underlying statute does not create a private right of action.[160] Thus, though *Gonzaga* provided environmental justice plaintiffs with the brief hope that they could avoid proving discriminatory intent under Section 601, the general rule has emerged that, in order to bring a claim under the Civil Rights Act to remedy environmental inequities, plaintiffs bear the burden of establishing discriminatory intent. As such, though the Civil Rights Act could be vital in lawsuits where such discriminatory intent is evident, these claims are, for the most part, ineffective.

2. The Politics of the Courtroom: Litigation Underscored by Community Action

As demonstrated by the situations in Turkey Creek and Eastmoor, the grassroots quest for environmental justice often features minority and low-income communities battling prosperous or politically well-connected developers. Though litigation can provide these communities with a concrete "winner" and "loser," the underlying participation of community members in fighting decisions that stand to contaminate or destroy the places where they live, work, and play is central to the community's ultimate success.[161] As local communities form grassroots organizations to combat decisions exposing them to environmental hazards, Cole and Foster note that "the potential exists to redefine existing power relations, to unsettle cultural

---

[159] 42 U.S.C. § 1983 (2006).

[160] Gonzaga Univ. v. Doe, 536 U.S. 273, 290 (2002).

[161] *See* COLE & FOSTER, *supra* note 3, at 105 ("[G]rassroots organizations created in the midst of struggles for environmental justice are crucial in creating an ongoing role for community participation in all decisions that fundamentally affect the participants' lives.").

assumptions about race and class, and to create new political possibilities for historically marginalized communities in local decision-making processes."[162] If litigation appears the only way to remedy a community's struggle with environmental inequities and hazardous conditions, the lawsuit must be underscored by the community's dedication to bringing their battle to an end; otherwise, the more politically connected and resource driven defendants will easily be able to dominate the courtroom.[163]

The battles that environmental justice communities have waged throughout the country have been and are currently being fought against developers and other individuals who likely have clear access to the best attorneys and expert witnesses that money can buy.[164] In order to compete with the resources available to the opposition, environmental justice plaintiffs must also hire attorneys and pay experts, which, for many low-income community groups, may prove to be no easy feat.[165] By hiring these attorneys and experts, community members are effectively taking their individual voices and placing their fate into the hands of an outsider, which could prove fatal to their cause.[166] The politics of the courtroom are weighted so heavily in favor of developers and industry insiders in environmental justice cases that, in many cases, lawsuits are lost the moment that the decision is made to go forward with the litigation process. The only way to tip the balance back in favor of the community is for the plaintiffs to act as a well-organized, united coalition focused on eliminating the environmental hazards impacting their surroundings.[167] In doing so, the community can redefine the politics of the courtroom, balancing the economic and legal resources of the well-connected defendants against the political unity and collective voice of the community plaintiffs.

When local residents actively participate in and publicly show opposition to decisions having devastating environmental impacts on their communities, any resultant litigation

---

[162] *Id.*

[163] Luke W. Cole, *Remedies for Environmental Racism: A View from the Field*, 90 MICH. L. REV. 1991, 1996 (1992).

[164] *See* COLE & FOSTER, *supra* note 3, at 129.

[165] *Id.*

[166] *Id.*

[167] *Id.* at 129-30.

immediately takes on more intimate undertones for the participants—the so-called "environment" that they struggle to save becomes more than simply their natural surroundings.[168] For the residents of Turkey Creek, the wetlands that they fought, and continue to fight to protect, act as a primary defense for their homes, schools, and churches from seasonal flooding.[169] For the tenants of Eastmoor, the struggle to compel Miller to repair their failed sewage system could lead to uncontaminated drinking water and a clean, healthy play area for their children.[170] By demonstrating a united front against the environmental inequities that their community has suffered, Turkey Creek homeowners gained enough political strength to force a well-connected developer to rescind his permit application to fill the neighborhood's essential wetlands without even resorting to litigation.[171] Eastmoor Estates, on the other hand, made the decision to file suit against Miller in November 2010.[172] As discussed above, their primary goal should not be solely limited to winning their lawsuit, because only focusing on the legal arena of the litigation could prove detrimental to their overall success.[173] Litigation may easily prove instrumental in their fight to live in a neighborhood that does not suffer from broken sidewalks and sewer pipes, with raw sewage steeping in their front yards; however, without the community's underlying political organization against Miller, Eastmoor Estates may not emerge victorious against those they allege have been perpetuating toxic and unhealthy conditions in the subdivision.[174]

a. Lessons to be Learned From Turkey Creek: The Battle for Environmental Justice in Eastmoor Estates

The situations in Turkey Creek and Eastmoor Estates typify the environmental justice movement's fundamental goal of

---

[168] *See supra* notes 30-31 and accompanying text.

[169] Ray, *supra* note 1; *see also* Coyle, *supra* note 59, at 7.

[170] Complaint, *supra* note 83, at 9.

[171] Miller, *supra* note 54.

[172] Complaint, *supra* note 83, at 2.

[173] *See* Cole, *supra* note 138, at 523-45; *See also* COLE & FOSTER, *supra* note 3, at 122, 129.

[174] *See generally* Complaint, *supra* note 83.

providing clean, healthy, and safe living conditions for all, regardless of race or socioeconomic status. The achievement of this goal is clearly furthered "by the leadership of tenants' associations . . . with little prior involvement in environmental issues."[175] With the formation of TCCI, Turkey Creek became a more organized and informed community with regards to the environmental risks that could threaten the neighborhood and its surroundings,[176] and the community association for Eastmoor Estates, EERA, has provided the means by which interested residents could collaborate in their efforts to improve their community's unsanitary conditions.[177] After many years of experience fighting to protect the Turkey Creek neighborhood from flooding, leaders in the community have become well-versed in "political organizing and . . . working with racial discrimination and poverty."[178] Accordingly, these residents are becoming more experienced in fighting environmental injustice before they reach the stage where litigation is the only viable option as a remedy.

In many ways, the Turkey Creek community was, and continues to be, in an ideal position to combat instances of environmental injustice that may affect area residents. Originally settled by emancipated slaves soon after the end of the Civil War, Turkey Creek has a marked sense of pride in the rich history that the community has cultivated since its establishment.[179] Over time, the community created for itself a sense of cultural autonomy from the neighboring Gulfport-Biloxi metropolitan area, and the community's pride in its local customs and traditions has ultimately shaped local residents' desire to preserve the area's environmental and cultural heritage.[180] For this reason, Turkey Creek community members have been adamant in their resolve to ensure that the wetlands protecting their homes, churches, and schools remain intact and free from potentially destructive commercial developments.[181] After winning their first major battle to save their wetlands, Turkey Creek residents and TCCI have

---

[175] NOVOTNY, *supra* note 2, at 2.
[176] *See* Ray, *supra* note 1.
[177] Complaint, *supra* note 83, at 3.
[178] NOVOTNY, *supra* note 2, at 2.
[179] *See History of Turkey Creek*, *supra* note 49.
[180] *See id.*
[181] *See* Ray, *supra* note 1.

remained active in community matters and responding to what they perceive to be additional threats to their community's environmental integrity.[182]

Along these lines, community activists in Turkey Creek have recognized the importance that community participation can have in building morale and raising awareness of potential environmental threats to their neighborhood. By increasing community awareness of both potential environmental hazards and the importance of attending public meetings, residents can identify environmental threats to Turkey Creek when they first arise. The widely-signed petition and numerous letters sent to the Corps after residents became aware of the proposed wetlands development were only the beginning of Turkey Creek's increased involvement in local government and decision-making processes.[183] Only a few Turkey Creek residents attended the initial public hearings regarding Ward's proposal; however, as community members became more aware of the importance of working together to combat environmental hazards, including the potential loss of their nearby wetlands, turnout at public hearings increased to between 200 and 300 residents.[184] The political and community organization of Turkey Creek is clearly rooted in the residents' sense of pride in, and concern for the welfare of, the land that their ancestors purchased, cultivated, and made their own, distinct from the urban metropolis growing nearby.[185]

Without this unity that has bound together Turkey Creek residents in their fight for environmental justice, the battles that they have waged against developers and politicians seeking to take advantage of the community's valuable resources could have been markedly less successful. Turkey Creek residents have proven that this type of community organization, dedication, and involvement is significant enough to change the politics of the courtroom.[186] Without an outspoken community devoted to preserving the environmental conditions of where they live, work, and play, the economic, political, and legal resources of the

---

[182] *See About TCCI*, *supra* note 60.
[183] *See* Ray, *supra* note 1.
[184] *Id.*
[185] *See About TCCI*, *supra* note 60.
[186] *See* COLE & FOSTER, *supra* note 3, at 105.

opposition could have considerably overshadowed the community's situation. Outside of the courtroom, many communities, such as Turkey Creek, find their voices against such environmental injustice; accordingly, the only way to prevail in the realm dominated by legal experts and politicians is to bring those voices strongly into the courtroom.[187] In doing so, Turkey Creek residents were successful in their efforts to save their wetlands. Faced with a similar situation, residents of Eastmoor Estates will also have to bring their voices and community resources into the courtroom to have equal success.

Unlike Turkey Creek, Eastmoor Estates is a relatively new, 1970s-era subdivision that is intended to be exclusively for low-income renters.[188] Because Eastmoor Estates has only existed for the past forty years, the neighborhood has not had as much time to develop the sense of cultural identity that Turkey Creek has fostered over the past century and a half. Moreover, the nature of Eastmoor Estates in itself—a rental community—does not easily lend itself to the type of community concern, participation, and dedication to environmental preservation that is readily observable in Turkey Creek, which is comprised of many homeowners who have inherited their homes from past generations.[189] While many members of the Turkey Creek community are lifelong residents, the fact that Eastmoor was designed for renters indicates that, in essence, the neighborhood is constantly in flux and experiences high tenant turnover, particularly in light of Miller's persistent efforts to evict his tenants.[190] Central to this point is the fact that those who no longer live in the neighborhood will logically have no interest in participating in the community's environmental justice battles. Departing residents will have no interest in continuing to participate in community matters, and incoming residents will have to be educated about the environmental battles—that is to say, the sewer problem and resultant toxic conditions—that they will be facing as an Eastmoor tenant. Moreover, if the new tenants

---

187 *Id.* at 129-30.

188 Complaint, *supra* note 83, at 7.

189 Miller, *supra* note 54.

190 Memorandum of Points and Authorities, *supra* note 89, at 9; Complaint, *supra* note 83, at 2, 7.

of Eastmoor only view their time in the neighborhood as temporary, the likelihood that they will become active participants in the community diminishes strongly.

However, many residents of Eastmoor have been paying what they believed to be mortgage payments and investing into their homes; because Miller did not have the authority to sell the homes to his tenants, the tenants do not have a legal interest in the home, though they may have an equitable one.[191] Regardless of the technical nature of the interest that these tenants may have in their homes, the belief that they are investing into their property could make them more vested in the outcome of the litigation against Miller, if they are in fact participants in the lawsuit. By investing in a home—or, at least, believing that they are investing in a home—the residents demonstrate that they do not necessarily view their time in Eastmoor as temporary. On the other end of the spectrum, many of the low-income renters who did not choose to invest in their property have limited options in their ability to move elsewhere, predominantly due to the lack of other low-income housing opportunities in the area.[192] Therefore, the entire community is comprised of those who consider their stay in Eastmoor temporary, those who believe that they have invested in their homes, and those who have few options besides remaining in the neighborhood. Of these groups, only one arguably has little interest in the outcome of the litigation, because they do not intend to remain in Eastmoor permanently. The remaining residents, however, must work to find their voice for the community and to bring that voice into the courtroom, as did many residents of Turkey Creek. Working toward this goal, Eastmoor residents established a community organization, EERA, which is central to encouraging tenants and residents to participate in community matters.[193] Forming the EERA was an important first step to organizing in the same political vein as Turkey Creek, and continuing this trend and encouraging community members to unite behind the litigation against Miller will prove essential as their battle continues.

---

[191] Memorandum of Points and Authorities, *supra* note 89, at 11.

[192] *Id.* at 9.

[193] Complaint, *supra* note 83, at 3.

As illustrated by the situation in Turkey Creek, the more vested that residents are in the outcome of the environmental justice battle that they are fighting, the more likely they are to actively participate in both community matters and the litigation process, and this active participation is instrumental to their success.[194] Attending community meetings, publicly showing opposition to their environmental troubles, and raising community awareness about the ramifications of their sewage failure are all fundamental to shifting the political balance of the courtroom to Eastmoor's favor, and Eastmoor residents can use Turkey Creek as a clear example of how important community participation is for success in litigation.

CONCLUSION

Since the inception of the environmental justice movement in the 1980s, advocates have been working toward providing healthy and safe living conditions for all, regardless of their racial background or socioeconomic status. Many of the most effective advocates have emerged from the frontlines of the battle for environmental justice, fighting to free their own communities from environmental hazards and toxic conditions that threaten the places where they live, work, and play. Despite the valiant efforts of these grassroots activists, instances of environmental injustice will continue to occur in the absence of more concrete preventative steps at the legislative level. Fortunately for communities negatively impacted by pervasive environmental risks, there are means by which these hazardous conditions may be remedied, either before or after the environmental harm arises.

Virtually all communities facing environmental justice issues would prefer to have remedied environmental harms prior to their actual occurrence, and the most effective means to achieve this goal is to increase the community's participation in the environmental decision-making process and to promote awareness within the community about the potential of certain decisions to cause environmental harms. In Turkey Creek, for instance, the fact that community members have prioritized educating

---

[194] *See supra* notes 30, 31, 161 and accompanying text; *see also* COLE & FOSTER, *supra* note 3, at 129-30.

themselves on the decision-making process and on the types of decisions that could negatively impact their surroundings has proven vital to their ability to recognize decisions that could pose environmental risks to their community. By recognizing the devastating impact that a proposal to fill neighboring wetlands could have on the community, Turkey Creek residents, from an early stage, attempted to fight the Corps' issuance of a Regional General Permit, intended to expedite the permitting process for wetlands-filling projects and spur commercial development after Hurricane Katrina. When communities take the initiative to understand the decision-making process and to organize themselves politically, they have achieved the important first step in combating instances of environmental injustice, both in and out of the courtroom.

Litigation can be an effective recourse, but not in the absence of dedicated community participation. For communities currently in the throes of litigation, it would be wise to remember that the most effective litigation strategy will combine legal arguments and community action. In the event that efforts outside of the courtroom fail to adequately remedy situations of environmental injustice, communities that have taken efforts to politically organize themselves are at a clear advantage over less organized and informed plaintiffs' groups. Primarily, these unified advocacy groups are able to bring their communities' political strength into the courtroom in an effort to offset the typically unbalanced dynamic between environmental justice plaintiffs and well-connected and wealthy developers and industry-insiders. For some environmental justice plaintiffs, the uphill battle against resource-driven defendants may seem insurmountable, particularly considering the high-costs of litigation. Though many low-income communities simply do not have the resources to engage in expensive and time-consuming litigation, their opponents generally have sufficient funding for experienced litigators, the industry's most respected expert witnesses, and, even worse, a prolonged legal battle that threatens to financially consume the resources of the plaintiffs seeking environmental justice. Just as these defendants use their resources and financing to their benefit, so too must these environmental justice plaintiffs bring to the table their biggest asset: their voices. On the streets of their

communities, it is their voices which attract attention, calling for justice and demanding to be heard. If they do not supplement their efforts in the courtroom with their own experiences and their own stories, then they may very well struggle for success.

April Hendricks Killcreas[*]

* The author wishes to thank Professor David Case for his encouragement in exploring the legal issues associated with the environmental justice movement as well as Professor Desiree Hensley for her willingness to discuss how these issues have significantly impacted Mississippi communities.