



August 24, 2019

Board of Directors

John Applegate
Alyson Flournoy
Robert Glicksman
Alice Kaswan
Alexandra Klass
Thomas McGarity
Sidney Shapiro
Amy Sinden
Robert R.M. Verchick

Chairman Raúl Grijalva
Rep. Donald McEachin
House Committee on Natural Resources

Re: **Statement of Principles for Environmental Justice
Legislation**

Dear Chairman Grijalva and Rep. McEachin:

The undersigned Member Scholars and staff with the Center for Progressive Reform (CPR) appreciate the opportunity to provide input on your draft statement of principles for environmental justice legislation. CPR is a nationally-recognized nonprofit research and educational organization with a network of law professor “Member Scholars” working to protect health, safety, and the environment through analysis and commentary. Collectively, we have expertise in environmental and administrative law and regulatory policy, and have written on the topic of administrative process reform and its application to environmental policy in the form of dozens of books, journal articles, reports, op-eds, and speeches, testimony, and other public presentations.

Advisory Council

Patricia Bauman
Frances Beinecke
Eula Bingham
W. Thompson Comerford, Jr.
Sally Greenberg
John Passacantando
Henry Waxman
Robert Weissman

We wholeheartedly endorse this effort and agree that it is long past time for federal policy to incorporate a deeper commitment to environmental justice. In particular, we appreciate that your statement of principles recognizes that there are both substantive and procedural dimensions to a robust commitment to environmental justice. Our comments focus on the procedural dimension.

Regulatory safeguards avert harms that can amplify institutionalized injustice by protecting against a variety of public health and environmental hazards, many of which are suffered disproportionately by historically marginalized members of society, including people of color and low-income communities. The pursuit of environmental justice therefore requires that government decisionmakers affirmatively seek out, include, and consider in a meaningful way the perspectives of those individuals and communities that have been historically and systematically excluded from the policymaking process. Specifically, an

environmental justice agenda should include the creation of new institutions and procedures that will affirmatively support individuals from marginalized communities as they participate in policymaking and implementation of environmental laws. At the very least, these new institutions and procedures would help to counter the undue influence that corporate special interests are now able to exert over the regulatory system. An environmental justice agenda should also consider going even further to level the playing field for marginalized communities by exploring reforms to the existing institutions and procedures through which corporate special interests have been able to exert this influence over regulatory decision-making, with the harmful result of systematically obstructing meaningful participation by individuals from marginalized communities.

The significance of the regulatory system in promoting environmental justice goes well beyond righting the wrongs inflicted through air, water, and soil. Specifically, the regulatory system offers the unique institutional potential for helping to redistribute political power, especially among historically marginalized members of our society. Strengthening the regulatory system by enhancing meaningful public participation opportunities would shift more political power to ordinary Americans and break up the concentration of political power that corporate interests now enjoy over the presidency and Congress. In this way, administrative process reforms would advance and make more durable the goals of environmental justice by restructuring power dynamics so that historically and systematically marginalized communities are empowered to claim their place in U.S. democracy.

The regulatory system includes several mechanisms for promoting public participation but in recent decades, corporate interests have succeeded in stunting or warping them to maintain their dominance over the regulatory system. The regulatory system can and should be strengthened by reforming these mechanisms and building new ones. The statement of principles should endorse and incorporate these reform efforts into its environmental justice agenda.

The statement's call to "[h]elp environmental justice organizations build capacity through federal community grants" offers a promising approach to this type of procedural reform. At the same, in order to empower members of marginalized communities, environmental justice legislation might include the following administrative process reforms aimed at promoting more effective public participation:

- Legislation establishing new procedural mechanisms and institutions for obtaining the perspectives of ordinary Americans, especially the working poor and communities of color, to inform their agenda-setting and regulatory decision-making. Rather than sitting back and waiting for responses that likely will never come, agencies should be under a legal affirmative duty to reach out to affected populations. New institutions should be created for the purpose of amplifying the voice of ordinary Americans in the rulemaking and enforcement process. These institutions might include new kinds of task forces charged with explaining scientific and other policy-relevant data to the public in order to obtain better informed feedback or teams of local engagement staff who would work with community leaders to obtain a comprehensive understanding of a regulation's potential community-level impacts. Another option might include the

Office of Public Advocacy (OPA) proposed in Sen. Elizabeth Warren's Anti-Corruption and Public Integrity Act.

- Legislation granting citizens enhanced and expanded rights to spur agency action on new regulations. This legislation should also grant citizens enhanced rights to hold agencies legally accountable for unnecessary delays in advancing rules or responding to petitions for rulemaking.
- Appropriate legislative steps to eliminate unnecessary procedural and analytical obstacles that delay rulemakings and waste scarce agency resources without improving the quality of agency decision-making. These obstacles include various requirements related to cost-benefit analysis and regulatory impact analysis, centralized review conducted by the White House Office of Information and Regulatory Affairs (OIRA), and the many procedural and analytical requirements mandated by the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and the Unfunded Mandates Reform Act. Congress should also repeal or significantly overhaul the Paperwork Reduction Act.
- Legislation that establishes new procedural mechanisms and institutions for affirmatively learning about the harms faced by different communities – particularly those that are disproportionately populated by the working poor and people of color. These efforts might include better use of targeted environmental monitoring, supporting epidemiological research and citizen science initiatives, and tools for better accounting for the cumulative effects of the different kinds of harms that those communities experience.
- Legislation that grants expanded citizen suit opportunities for holding corporations and individuals accountable for regulatory violations, including, to the extent legally feasible, removing standing barriers, particularly those created by the courts, that block people affected by violations to bring suits requiring that the law be enforced.
- Legislation that expands and enhances protections for whistleblowers who play a vital role in exposing regulatory violations.

Thank you again for taking on this important project. We look forward to working with you to further develop the ideas we have outline above.

If we can be of any further assistance, please contact CPR Senior Policy Analyst James Goodwin at (202) 747-0698, ex. 5, or jgoodwin@progressivereform.org.

Sincerely,

Richard Murphy

AT&T Professor of Law

Texas Tech University School of Law

Sidney Shapiro

Frank U. Fletcher Chair in Administrative Law
Wake Forest University School of Law

James Goodwin

Senior Policy Analyst
Center for Progressive Reform